



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

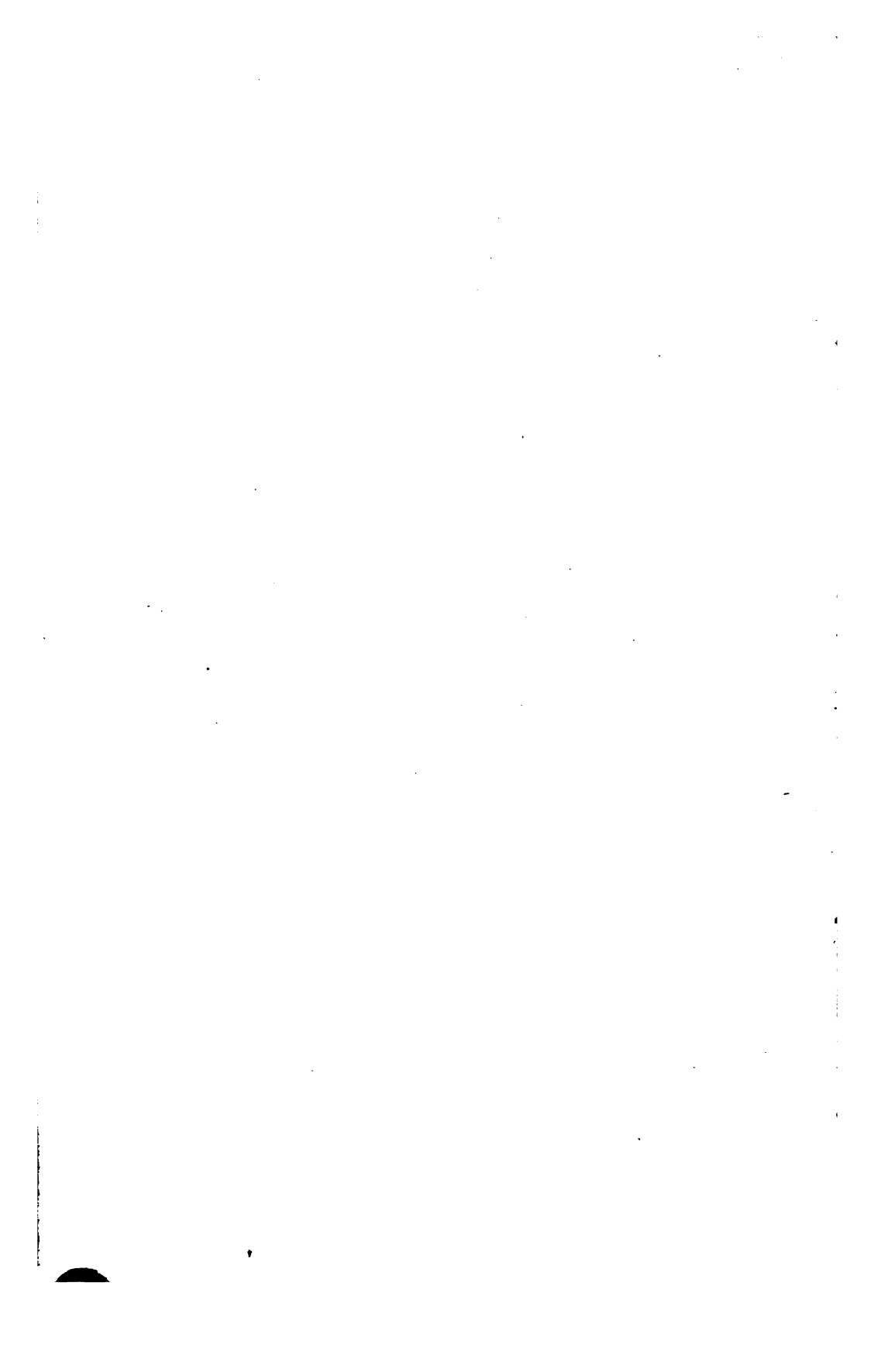
About Google Book Search

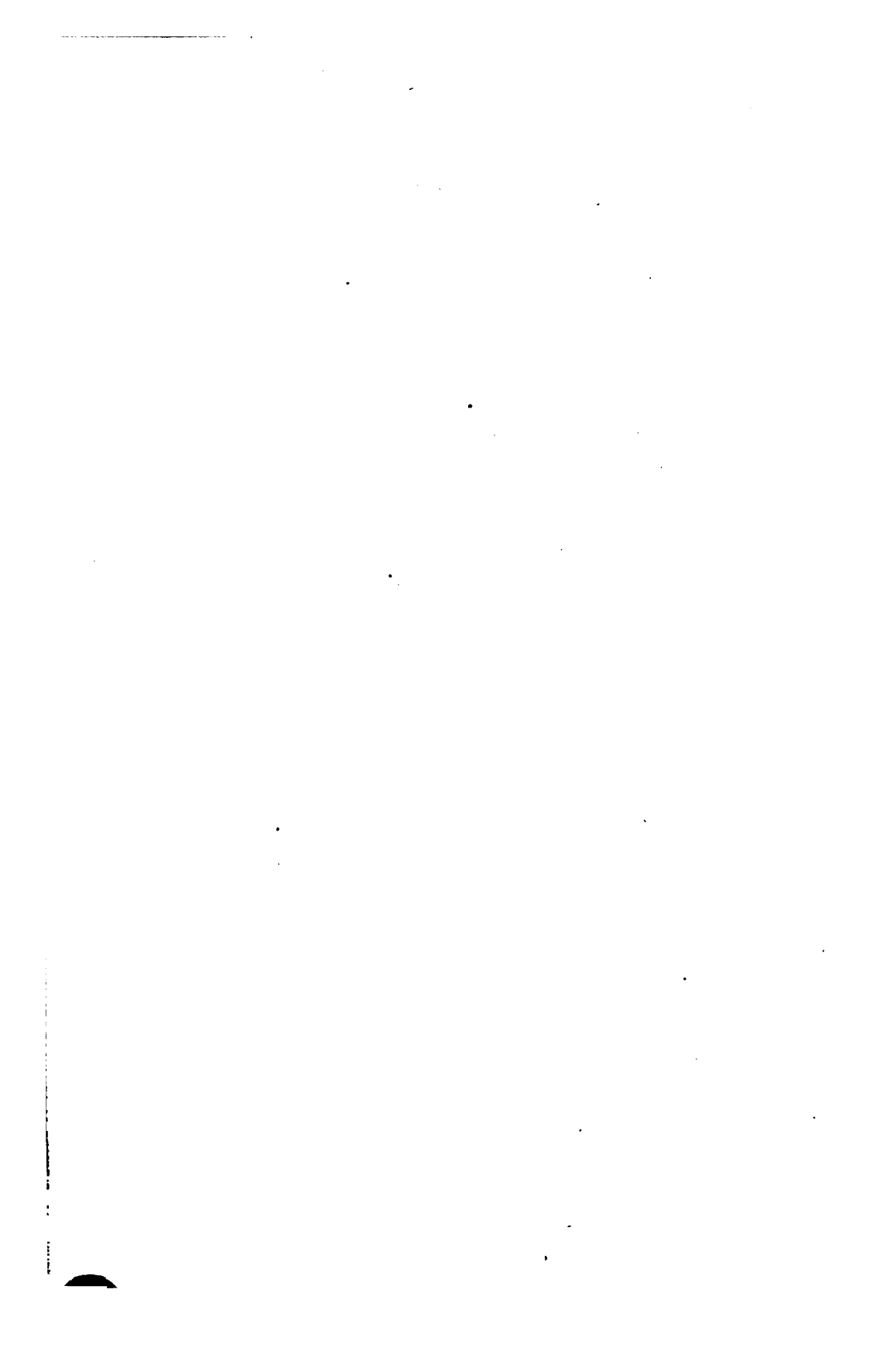
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

S. J. FIELD.









*For use in the Courtroom
= of the code.*

B O O K

OF

F O R M S ,

ADAPTED TO THE

CODE OF PROCEDURE.

ALBANY :
WEED, PARSONS AND COMPANY, PRINTERS.
1861.

**LIBRARY OF THE
LELAND STANFORD, JR., UNIVERSITY**

57,618

R E P O R T .

To the Legislature of the State of New York:

The Commissioners of the Code, appointed by the Act of April 6th, 1857, beg leave to make this their fourth

R E P O R T :

At the last session of the Legislature the Commissioners reported the POLITICAL CODE complete. Since then, they have prepared the draft of a part of the CIVIL CODE, which they have distributed for examination pursuant to law.

They have also prepared, in obedience to an act of the last session, and now submit to the Legislature, a BOOK OF FORMS, adapted to the CODE OF PROCEDURE.

All which is respectfully submitted.

DAVID DUDLEY FIELD.
WILLIAM CURTIS NOYES.
ALEXANDER W. BRADFORD.

NEW YORK, *March 30th*, 1861.

BOOK OF FORMS.

PART I.

SUMMONS.

No. 1.

i. Summons in actions arising on contract for the recovery of money only ; the complaint being also served. (Under sections 128 and 129.)

SUPREME COURT.

JOHN SMITH, <i>Plaintiff,</i> <i>against</i> JOHN JONES, <i>Defendant.</i>
--

Summons.

YOU are hereby summoned to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon me, at my office, [No. street,] in the [city] of [Albany,] within twenty days after the service hereof, exclusive of the day of service.

And if you fail to do so, the plaintiff will take judgment against you for dollars, with interest from the day of, 18...

A. B.,
Plaintiff's Attorney.

[ALBANY, January 1, 1861.]
To the defendants above named.

SUMMONS.

No. 2.

ii. *Summons in other actions; the complaint being also served.*
(Under sections 128 and 129.)

[TITLE.]

You are hereby summoned to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon me, at my office,, within twenty days after the service hereof, exclusive of the day of service.

And if you fail to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

A. B.,
Plaintiff's Attorney.

[Date.]

To the defendants above named.

No. 3.

iii. *Summons in actions arising on contract, for the recovery of money only; the complaint not being served.* (Under sections 128, 129, 130.)

[TITLE.]

You are hereby summoned to answer the complaint in this action, which will be [or, which is] filed with the clerk of, and to serve a copy of your answer upon me, at my office,, within twenty days after the service hereof, exclusive of the day of service.

And if you fail to do so, the plaintiff will take judgment against you for dollars, with interest from the . . . day of, 18...

A. B.,
Plaintiff's Attorney.

[Date.]

To the defendants above named.

SUMMONS.

No. 4.

iv. *Summons in other actions; the complaint not being served.*
(Under sections 128, 129, 130.)

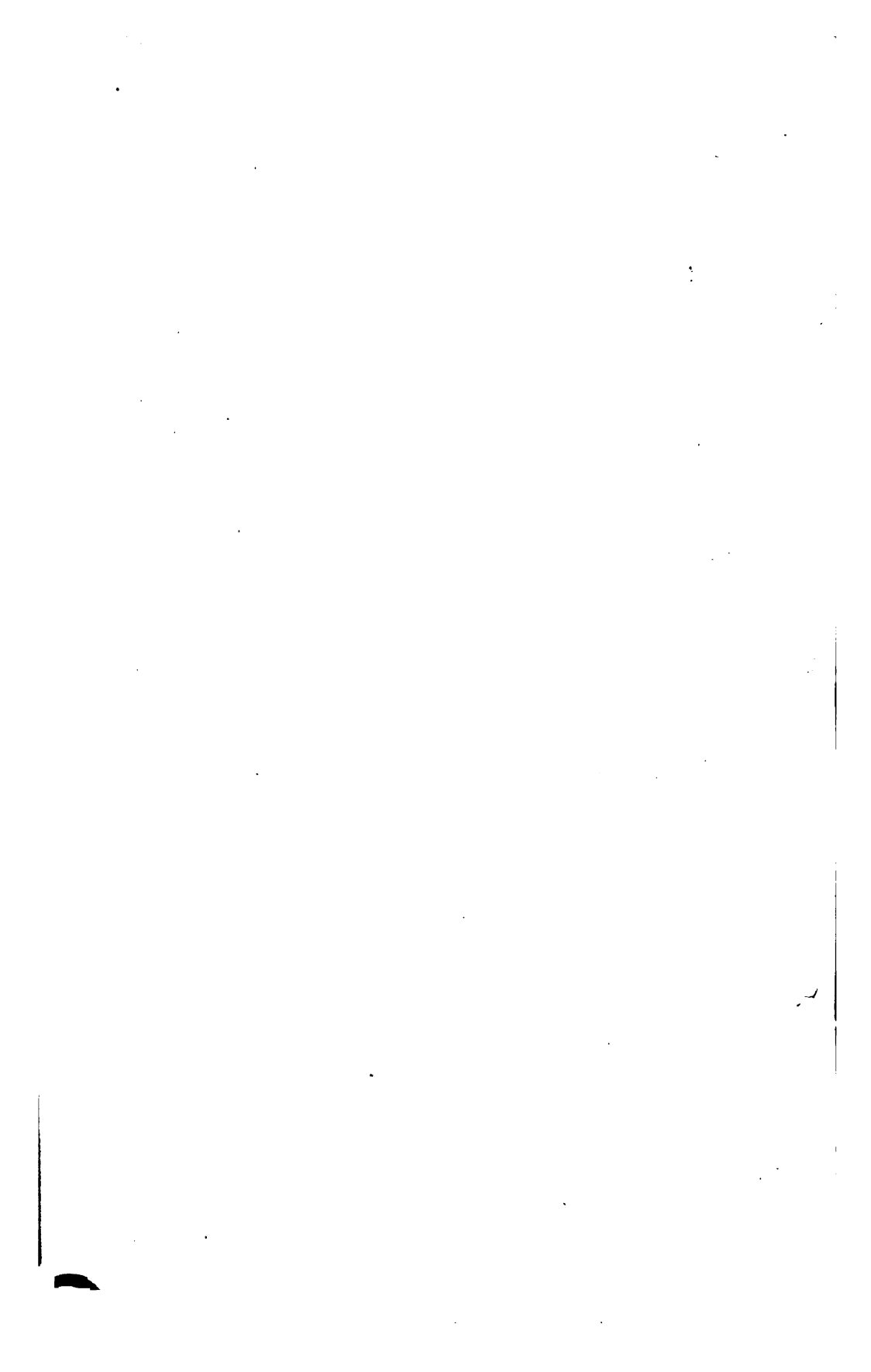
[As in No. 3, to the word "service"; and continue.]

And if you fail to do so, the plaintiff will apply to the court
for the relief demanded in the complaint.

A. B.,
Plaintiff's Attorney.

[Date.]

To the defendants above named.



P A R T I I .

PLEADINGS.

- CHAPTER I. COMPLAINTS.**
 - II. DEMURRERS.**
 - III. ANSWERS.**
 - IV. SUBSEQUENT PLEADINGS.**
-

CHAPTER I

COMPLAINTS.

- Title 1. GENERAL FORM.**
- 2. BY OR AGAINST PARTICULAR PERSONS.**
- 3. FOR DEBT.**
- 4. FOR DAMAGES, UPON CONTRACT.**
- 5. FOR DAMAGES, UPON WRONGS.**
- 6. FOR SPECIFIC PROPERTY.**
- 7. FOR SPECIAL RELIEF.**
- 8. FOR ORDINARY AND SPECIAL RELIEF UNITED.**

COMPLAINTS.

TITLE I.

GENERAL FORM.

No. 5.

General form of complaint; containing several causes of action.
(Under sections 142, 167.)

SUPREME COURT.

[Names of all the plaintiffs]	}	<i>Complaint.</i> COUNTY OF [ALBANY.]
<i>against</i>		
[Names of all the defendants.]		

The plaintiff complains, and alleges:

First: For a first claim:¹

- I.
- II.
- III.

Second: For a second claim:

- I.
- II.
- III.

Third: For a third claim:

- I.
- II.
- III.

Wherefore the plaintiff demands judgment:

- 1.
- 2.

A. B.,
Plaintiff's Attorney.

[ALBANY, January 1, 1861.]

[Verification.]

¹ The word *count* is inapplicable to pleadings under the Code, which rejects fictions, and therefore cannot admit different modes of stating the same cause. If there be really different causes of action to be stated, they should be called, as they are, different causes of action, or more shortly different CLAIMS.

COMPLAINTS.

TITLE II

BY OR AGAINST PARTICULAR PERSONS.

No. 6.

i. *By an executor.*

SUPREME COURT.

JOHN SMITH, ¹ as executor of the will of James Smith, deceased, <i>against</i> JOHN JONES.	}	COUNTY OF [ALBANY.]
--	---	---------------------

The plaintiff complains, and alleges:

I. [*State a cause of action accruing to the testator.*"]

II. That the said James Smith in his lifetime made and published his last will, whereby he appointed the plaintiff executor thereof.

III. That on the....day of, 18 .., at, the said James Smith died.

¹ The word "as" is essential, nor can it be easily replaced by any other word. Thus a declaration which invariably, and more than a dozen times, mentioned the plaintiff as "the said Sarah, executrix as aforesaid," closing with profert of letters testamentary, was held to be fatally defective under the old practice. (*Henshall v. Roberts*, 5 East, 151, 154.) The same rule has been settled in the court of appeals. (Compare *Merritt v. Seaman*, 6 N. Y., [2 Seld.], 168, with *Smith v. Levinus*, 8 N. Y. [4 Seld.], 474; and see also *Gould v. Glass*, 19 Barb., 185; *Sheldon v. Hoy*, 11 How., 14; *Ogdensburgh Bank v. Van Rensselaer*, 6 Hill, 241.) If the plaintiff's character is thus stated in the title, it is not necessary to repeat it, but he may afterwards be called "the plaintiff." (See *Stanley v. Chappell*, 8 Cow., 235.)

² Promises made to the *testator* should not be stated as made to "the plaintiff." (*Worden v. Worthington*, 2 Barb., 370; *Christopher v. Stockholm*, 5 Wend., 36.)

COMPLAINTS.

IV. That on the day of, 18 .., letters testamentary were duly issued on the said will, to the plaintiff, by the surrogate of the county of

[Demand of Judgment.]

No. 7.

ii. *By an administrator.*

SUPREME COURT.

JOHN SMITH, as administrator of the estate of James Smith, deceased, <i>against</i> JOHN JONES.	}	COUNTY OF
--	---	-----------------

The plaintiff complains, and alleges:

I. [State a cause of action accruing to the intestate.]

II. That on the day of, 18.., at, the said James Smith died intestate.

III. That on the day, 18.., letters of administration upon the estate of the said James Smith were duly issued by the surrogate of the county of, to the plaintiff, by which he was appointed administrator of all the goods and credits belonging to the said James Smith at the time of his death.¹

[Demand of Judgment.]

¹ The surrogate's jurisdiction is all that need be shown. (*Emery v. Hildreth*, 2 Gray, 228; see *Bloom v. Burdick*, 1 Hill, 134.) And this is sufficiently pleaded by the use of the word "*duly*." (Code, § 161.) The executor's authority to sue depends solely upon the letters testamentary. (*Thomas v. Cameron*, 16 Wend., 580.)

² The surrogate's jurisdiction is sufficiently shown. (Code, § 161.) It seems proper to show what kind of administrator the plaintiff claims to be. He might be an administrator *de bonis non*. The defendant might have paid the debt to some one claiming to be administrator, and might desire to know whether the claims of the two conflicted. The omission of this clause would not, however, be any ground for demurrer, and rarely for even a motion.

COMPLAINTS.

No. 8.

iii. *Against an executor.*

SUPREME COURT.

JOHN SMITH <i>against</i> WILLIAM JONES, as executor of the will of John Jones, deceased.	}	COUNTY OF.....
--	---	----------------

The plaintiff complains, and alleges:

I. [*State a cause of action against the testator.*]

II. That the said John Jones is dead.

III. That the defendant is the executor of the last will of the said John Jones.¹

[*Demand of Judgment.*]

No. 9.

iv. *Against an administrator.*

SUPREME COURT.

JOHN SMITH <i>against</i> WILLIAM JONES, as administrator of the estate of John Jones, deceased.	}	COUNTY OF.....
---	---	----------------

The plaintiff complains, and alleges:

I. [*State a cause of action against the intestate.*]

II. That the said John Jones has died intestate.

III. That the defendant is administrator of the estate of the said John Jones.¹

[*Demand of Judgment.*]

¹ If letters testamentary have not been issued, the defendant is not an executor. (*Thomas v. Cameron*, 16 Wend., 579.) And as the matter is clearly within the defendant's knowledge, the plaintiff may use a very general method of pleading. Everything necessary to constitute the executorship is included in this averment.

COMPLAINTS.

No. 10.

v. *By the committee of a lunatic or drunkard.*

SUPREME COURT.

JOHN SMITH, as committee of James Smith, a lunatic [or habitual drunk- ard], <i>against</i> JOHN JONES.	}	COUNTY OF.....
---	---	----------------

The plaintiff complains, and alleges :

I. [*State the cause of action, if it accrued to the lunatic before the appointment of the committee. If it accrued afterwards, state it after the next articles.*]

II. That on the day of, 18.., at, the supreme court, at a special term thereof, [*or, the county court of the county of, or otherwise,*] duly¹ adjudged the said James Smith to be a lunatic [*or, of unsound mind, or, an habitual drunkard.*]

III. That, [at the same time and place, *or on, &c., at &c.,*] the said court duly¹ appointed the plaintiff committee of the said James Smith, with the [usual] powers.

[*Demand of Judgment.*]

¹ If the appointment was made by the supreme court, the word "duly" may be omitted, as jurisdiction will be presumed. (See *Bloom v. Burdick*, 1 Hill, 130.) If made by a county court, "duly" is sufficient, and proper, to show jurisdiction in pleading.

COMPLAINTS.

No. 11.

vi. *Against the committee of a lunatic, &c.*

SUPREME COURT.

JOHN SMITH <i>against</i> WILLIAM JONES, as committee of John Jones, a lunatic [<i>or</i> habitual drunkard].	}	COUNTY OF
--	---	-----------------

The plaintiff complains, and alleges:

I. [*State a cause of action against the lunatic.*]II. That afterwards [*or* on the day of, 18..] the said John Jones was duly¹ adjudged by the [supreme] court to be a [lunatic.]III. That the defendant was duly¹ appointed by the said court committee of the [person and] estate of the said [lunatic.]

Wherefore the plaintiff demands judgment for dollars, with interest from, to be paid out of the estate of the said John Jones in the hands of the defendant.

No. 12.

vii. *By a public officer.*

SUPREME COURT.

ROBERT DENNISTON, [as controller of the State of New York,] <i>against</i> JOHN JONES.	}	COUNTY OF
---	---	-----------------

The plaintiff complains, and alleges:

I. That he is the [controller] of the [State of New York.]²II. [*State the cause of action.*][*Demand of Judgment.*]¹ See note 1, on page 10.² This allegation is proper, and might be required on motion, if omitted, though the complaint would be good on *demurrer* without it. (Compare *Gould v. Glass*, 19 Barb., 185, with *Smith v. Levinus*, 8 N. Y. [4 Seld.], 447.)

COMPLAINTS.

No. 13.

viii. *By a receiver, appointed by the court in an action.*

SUPREME COURT.

JOHN SMITH, as receiver of	}	COUNTY OF
<i>against</i>		
JOHN JONES.		

The plaintiff complains, and alleges:

I. [*State the original cause of action.*]

II. That on the day of, 18.., at, the plaintiff was appointed by the [supreme] court, at a special term thereof, in an action therein pending between A. B., plaintiff, and C. D., defendant, receiver of [*state the property so as to include the cause of action.*]

III. That on the [same] day he duly qualified as such receiver.

[*Demand of Judgment.*]

No. 14.

ix. *By a receiver, appointed by a judge in supplementary proceedings.*

[TITLE AS IN No. 13.]

[COUNTY.]

The plaintiff complains, and alleges:

I. [*State the original cause of action.*]

II. That on the day of, 18.., at, the plaintiff was duly appointed by E. F., a justice of the supreme court, [*or, county judge of county,*] receiver in proceedings supplementary to execution against one C. D., of all the real and personal property of the said C. D.

III. That on the [same] day he duly qualified as such receiver.

[*Demand of Judgment.*]

COMPLAINTS.

No. 15.

x. *By receiver of a bank.*

I. [*Title and commencement as in No. 13.*]

II. That on the day of, 18 .., at....., the supreme court, at a special term thereof, adjudged the [said] bank to be insolvent, and appointed the plaintiff receiver of all its effects.

III. That on the [same] day, he duly qualified as such receiver.

[*Demand of Judgment.*]

No. 16.

xi. *Against a receiver.*

SUPREME COURT.

JOHN SMITH <i>against</i> JOHN JONES, as receiver of	}	COUNTY OF
--	---	-----------------

The plaintiff complains, and alleges:

I. [*State the cause of action.*]

II. That the defendant is receiver of

[*Demand of Judgment.*]

COMPLAINTS.

No. 19.

xiv. *By a foreign corporation.*¹

SUPREME COURT.

THE NEW YORK AND NEW HAVEN RAILROAD COMPANY <i>against</i> JOHN JONES.	}	COUNTY OF.....
---	---	----------------

The plaintiff complains, and alleges:

I. That it was incorporated by [*or, under*] an act of the legislature of the [State of Connecticut,] passed on the day of 18., for the purpose of [constructing and maintaining a railroad from the city of New Haven westerly towards the city of New York.]

II. [*State the cause of action.*][*Demand of Judgment.*]

No. 20.

xv. *By an infant.*

SUPREME COURT.

JOHN SMITH, an infant, by James Smith, his guardian, <i>against</i> JOHN JONES.	}	COUNTY OF
--	---	-----------------

The plaintiff complains, and alleges:

I. That he is under the age of twenty-one years.

II. That on theday of, 18., at, the above named James Smith was duly² appointed, by A. B.,

¹ A foreign corporation must allege its corporate character in the complaint. (*Connecticut Bank v. Smith*, 9 Abb., 175. See *contra*, *Holyoke Bank v. Haskins*, 4 Sand., 675.) But a domestic corporation need not aver its incorporation at all. (*Lafayette Insurance Company v. Rogers*, 30 Barb., 492; *Shoe and Leather Bank v. Brown*, 9 Abb., 219; *Kennedy v. Colton*, 28 Barb., 62; *Dutchess Cotton Manufacturing Co.*, 14 Johns., 245.)

² Code, § 161.

COMPLAINTS.

a justice of this court, [or, county judge of county,]
guardian of the plaintiff for the purposes of this action.

III. [*State the cause of action.*]

[*Demand of Judgment.*]

No. 21.

xvi. *Against a married woman, on her note.*

SUPREME COURT.

JOHN SMITH
against
MARY JONES.

} COUNTY OF.....

The plaintiff complains, and alleges:

I. That the defendant is the wife of one William Jones.

II. That at the time of making the note hereinafter mentioned, the defendant was, and still is, seised in fee [*or otherwise*] in her own separate right of [a farm in the town of Bern, Albany county, containing about acres of land, of the value of dollars.]¹

III. That on the, day of, 18.., at, in consideration of the said note, the plaintiff [sold and delivered to the defendant twenty cows, of the value of dollars, which were used to stock her said farm.]²

[*If the consideration was not a direct benefit to the defendant or her estate, substitute the following:*

III. That on the day of, 18.., at, in consideration of the said note, and at the request of the defendant, the plaintiff delivered to, twenty cows, of the value of dollars.

¹ The complaint must show what the estate is, and what is its value. (*Sexton v. Fleet*, 6 Abb., 9; *Cobine v. St. John*, 12 How., 336.)

² If the debt is contracted for the benefit of the wife, or of her estate, no allegation of an intent to charge it on the estate is necessary. (See *Yale v. Dederer*, 18 N. Y., 273, 284, 285.)

COMPLAINTS.

IV. That in consideration thereof, the defendant agreed to charge her said estate with the amount of the said note.]¹

IV. [or V.] [*Set forth the note in the usual manner.*]

Wherefore the plaintiff demands judgment:²

1. That the said note be a charge upon the said estate of the defendant;

2. That the said estate be applied to the payment of the sum of dollars, with interest from the day of
....., 18...

3. That a receiver be appointed to take possession of the same, for that purpose.³

No. 22.

xvii. *Against husband and wife, for an ante-nuptial debt of the wife, the husband not having acquired any of her property.*

SUPREME COURT.

JOHN SMITH against JOHN JONES and MARY his wife.	}	COUNTY OF
--	---	-----------------

The plaintiff complains, and alleges:

I. [*State the cause of action.*]

II. That afterwards the defendant, Mary, married the defendant, John, and is still his wife.

[*Demand of Judgment.*]⁴

¹ If the consideration was not for the benefit of the wife or her estate, this allegation is necessary. (*Yale v. Dederer*, 18 N. Y., 281.) The agreement must be in writing (S. C., Trans. Rep., 90); but this need not be alleged in the complaint.

² See *Cobine v. St. John*, 12 How., 339; *Yale v. Dederer*, 21 Barb., 292.

³ Whether the "Married Women's Act" of 1860 dispenses with the necessity for this peculiar form of action and complaint, is a question that we do not feel at liberty to decide. It will no doubt be judicially considered at an early day.

⁴ There is no difference in the form of judgment, though the execution is restricted. (*Laws of 1853*, p. 1057.)

COMPLAINTS.

No. 23.

xviii. *The same, the husband having acquired property from the wife.*

[TITLE.]

[COUNTY.]

I and II. [*As in the preceding form.*]

III. That before the said marriage the said Mary owned
[*describe the property.*]

IV. That [before or since] the said marriage, the said Mary conveyed to the said defendant John all the said property. [*Or if a part only was conveyed, describe it.*]

V. That the value of the property so conveyed was dollars.

[Demand of Judgment.]

No. 24.

xix. *By the assignee of a claim.*

SUPREME COURT.

JOHN SMITH
against
JOHN JONES.

} COUNTY OF

The plaintiff complains, and alleges:

I. [*State a cause of action accruing to the plaintiff's assignor.*]

II. That on the day of, 18 .., at....., the said A. B. assigned the said claim to the plaintiff.¹

[Demand of Judgment.]

¹ That some such allegation is necessary, see *Prindle v. Caruthers*, 15 N. Y., 426; *White v. Brown*, 14 How., 282; *Adams v. Holley*, 12 How., 330. That this is sufficient, see *Martin v. Kanouse*, 2 Abb., 331; *Horner v. Wood*, 15 Barb., 372.

COMPLAINTS.

No. 25.

xx. *By an assignee for the benefit of creditors.*

SUPREME COURT.

JOHN SMITH
against
JOHN JONES.

} COUNTY OF

The plaintiff complains, as assignee for the benefit of the creditors of A. B.,¹ and alleges:

I. [*State a cause of action accruing to the assignor.*]

II. That on the day of, 18..., at, the said A. B. assigned all his property, including the said claim, to the plaintiff [in trust for the purpose of paying all his debts.]²

[*Demand of Judgment.*]

¹ An assignee for the benefit of creditors is a trustee, and is not personally liable for costs. But he must allege *in his complaint* that he sues *as such*, or the court will not relieve him, in case he fails in the action. (*Murray v. Hendrickson*, 6 Abb., 96; 1 Bosw., 635.) For any other purpose this allegation is entirely unnecessary.

² The clause in brackets is only necessary for the purpose stated in the preceding note.

COMPLAINTS.

TITLE III.

FOR DEBT.

- SECTION 1. Money lent.
2. Money received.
 3. Money paid.
 4. Goods sold and delivered.
 5. Goods sold but not delivered, the title having passed.
 6. Goods sold, the title not having passed.
 7. Price of real property sold.
 8. For services.
 9. Rent, board, &c.
 10. By carriers.
 11. On an award.
 12. On judgments.
 13. On instruments for the payment of money only.
 14. On promissory notes.
 15. On inland bills of exchange.
 16. On foreign bills of exchange.
 17. On insurance policies.
 18. On a guaranty.
 19. On debts created by statute.
 20. For several causes of action.

No. 26.

Sec. 1. COMPLAINT FOR MONEY LENT.

SUPREME COURT.

JOHN SMITH

against

JOHN JONES.

} COUNTY OF

The plaintiff complains, and alleges:

¶ That on the day of, 18.., at,
he lent to the defendant dollars.¹

¹ It is not necessary to state when the debt was to be repaid except for the purpose of fixing a date for interest. The presumption of law is, that it was to be paid immediately. (*Peets v. Bratt*, 6 Barb., 662.)

Nor is it necessary to show that the debt was due at the commencement of the action. If it was not, that is matter of defense, to be set up in the answer. (*Smith v. Holmes*, 19 N. Y., 271.)

COMPLAINTS.

II. That the defendant has not paid the same¹ [except dollars, paid on the day of, 18...]²

Wherefore the plaintiff demands judgment for dollars, with interest from the day of, 18...³

Sec. 2. COMPLAINTS FOR MONEY RECEIVED FOR PLAINTIFF'S USE.

No. 27.

i. *Common form.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18 .., at, the defendant received dollars from one James Brown, for the use of the plaintiff.⁴

II. That the defendant has not paid the same.

[Demand of Judgment.]

¹ It may be doubted whether the allegation of non-payment is necessary. (See *Lanning v. Carpenter*, 20 N. Y., 458; *McKyring v. Bull*, 16 N. Y., 297.) As any payments must be pleaded, it is certain that the most general form of averring non-payment is sufficient. It is not necessary to add "or any part thereof."

² Although not necessary, it is highly proper to credit the defendant with any payments.

³ The common demand for costs is unnecessary.

⁴ The case of *Lienan v. Lincoln*, 2 Duer, 670, is sometimes cited to show that this allegation is not sufficient on demurrer. But although the head note of that case states such a doctrine, it will be found that no such allegation was before the court. The plaintiff in that cause averred that the defendant was indebted (a mere conclusion of law) to him for "moneys, notes and effects," received for the use of the plaintiff's assignor. An account was annexed, showing that more than all the balance claimed consisted of promissory notes received by the defendant. It was not alleged that these notes had been paid to the defendant, and therefore he could not be charged with their amount. No one pretends that an action for money received can be sustained upon proof of notes received and uncollected, and the complaint in *Lienan v. Lincoln* contradicted itself on its face.

COMPLAINTS.

No. 28.

ii. *For price of goods sold by a factor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18 .., at he delivered to the defendant [one thousand barrels of flour] for sale upon commission.

II. That on the day of, 18.., [*or*, on some day unknown to the plaintiff, before the day of, 18..,] the defendant sold the said merchandise for dollars.

[III. That the commissions and expenses of the defendant thereon, amount to dollars.]¹

IV. That on the day of, 18.., the plaintiff demanded from the defendant the proceeds of the said merchandise.²

V. That he has not paid the same.

[*Demand of Judgment.*]

¹ This form is drawn on the presumption that the factor has not accounted. If he has accounted, but not paid, the better form is on an "account stated." If he has not accounted, it is improbable that the plaintiff will know the precise amount of his expenses, and it is not necessary to credit him with them in the complaint.

² An express demand should be alleged. (*Baird v. Walker*, 12 Barb., 298; *Halden v. Crafts*, 4 E. D. Smith, 490; 2 Abb., 303.)

COMPLAINTS.

No. 29.

iii. *For money received by defendant, through mistake of the plaintiff.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, the plaintiff, intending to pay the defendant [fifty] dollars, paid to him [five hundred] dollars by mistake.

II. That the defendant has not repaid the sum overpaid.¹

[Demand of Judgment.]

Sec. 3. COMPLAINTS FOR MONEY PAID.

No. 30.

i. *For money paid to a third party at the defendant's request.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, at the request of the defendant, the plaintiff paid to one James Brown dollars.

II. That in consideration thereof, the defendant promised to pay the same to the plaintiff [on demand.]²

¹ A demand is not necessary (*Utica Bank v. Van Gieson*, 18 Johns., 485), but it may affect the question of interest.

² This allegation is not *absolutely* necessary, as the law will imply a promise, but as an express promise is nearly always made in such cases, it is better to state it. If no express promise is made, none should be pleaded. (See *Farron v. Sherwood*, 17 N. Y., 230; see also *Berry v. Fernandes*, 1 Bing., 338; *Durnford v. Messiter*, 5 Mau. & Sel., 446.)

COMPLAINTS.

III. That [on the day of, 18.., the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.¹

[*Demand of Judgment.*]

No. 31.

ii. *By surety against principal.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., a judgment was [duly]² rendered in the court of, against the defendant, in favor of one James Brown, for [dollars,] from which the said defendant appealed to the [court of appeals.]

II. That on the day of, 18.., at the request of the defendant, the plaintiff executed an undertaking, a copy of which is hereto annexed.

III. That [at the term of the said court of appeals] the said judgment was affirmed, with dollars costs and damages.

IV. That on the day of, 18.., the plaintiff paid dollars upon the said undertaking, to the said Brown.

V. That the defendant has not paid the same to the plaintiff.

[*Demand of Judgment.*]

[*Annex copy of the Undertaking.*]

¹ No demand is necessary. It is inserted here only as an example of the mode of alleging demand when it is desired to fix a date for the commencement of interest.

² If the judgment was rendered in a court of inferior or limited jurisdiction, the word "duly" implies jurisdiction. (Code, § 161.)

COMPLAINTS.

No. 32.

Sec. 4. COMPLAINTS FOR GOODS SOLD AND DELIVERED.

i. *Goods sold to defendant at a fixed price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he sold and delivered to the defendant¹ [one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods.]²

II. That the defendant promised to pay dollars for the said goods.³

III. That he has not paid the same.⁴

[Demand of Judgment.]

¹ An averment of request is not necessary. (*Acome v. American Mineral Co.*, 11 How., 27; *Glenny v. Hitchins*, 4 How., 98; note to *Fisher v. Pyne*, 1 M. & G., 266; approved in *Victors v. Davis*, 1 Dowl. & L., 986, 12 M. & W., 760; PARKE, B.)

² Details may be had in a bill of particulars.

³ It is not necessary to specify any time at which the debt was to be paid. A general promise is to be construed as a promise to pay immediately. (*Peele v. Bratt*, 6 Barb., 662; *Gibbs v. Southam*, 5 Barn. & Adol., 911.) If the promise was to pay at a certain time, not yet elapsed, that is matter of defense. (*Smith v. Holmes*, 19 N. Y., 271.) But if a day was fixed, it will, if stated, furnish a date for the commencement of interest. (See *Van Rensselaer v. Jewett*, 2 N. Y. [2 Comst.], 140.)

⁴ No demand is necessary. (See *Gibbs v. Southam*, 5 Barn. & Adol., 911; *Radford v. Smith*, 3 M. & W., 258.)

COMPLAINTS.

No. 33.

ii. *The same, at a reasonable price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he sold and delivered to the defendant [sundry articles of house furniture.]

II. That the same were reasonably worth dollars.¹

III. That the defendant has not paid the same.*

[*Demand of Judgment.*]

No. 34.

iii. *For goods delivered to a third party at defendant's request, at a fixed price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of 18.., at, he sold to the defendant [one hundred barrels of flour,] and, at the request of the defendant, delivered the same to one James Brown.

II. That the defendant promised to pay to the plaintiff dollars therefor.

III. That he has not paid the same.

[*Demand of Judgment.*]

¹ The law implies a promise to pay so much as the goods are reasonably worth. This is, however, matter of law, and should not be pleaded. (*Farrow v. Sherwood*, 17 N. Y., 230.)

It is not necessary to show that the debt was due before the commencement of the action, nor even at the date of the complaint. (*Smith v. Holmes*, 19 N. Y., 271.)

* See note 4, on page 25.

COMPLAINTS.

No. 35.

iv. *For necessities furnished to defendant's family, without his express request, at a reasonable price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he furnished to Mary Jones, the wife of the defendant, at her request, sundry articles of [food and clothing.]¹

II. That the same were necessary for her.

III. That the same were reasonably worth dollars.

IV. That the defendant has not paid the same.

[Demand of Judgment.]

Sec. 5. COMPLAINTS FOR GOODS SOLD, BUT NOT DELIVERED,
THOUGH THE TITLE HAS PASSED.

No. 36.

i. *For goods sold at a fixed price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he sold to the defendant [all the crops then growing on his farm in]

¹ It is unnecessary to allege that the wife acted as the husband's agent, or with his consent. In nine cases out of ten, these averments would be fictions of law, which must never be pleaded under the Code. The husband is liable in the proper cases, although he has expressly forbidden the plaintiff to trust his wife. (2 Kent's Com., 148; *Sykes v. Halstead*, 1 Sand., 483.)

 COMPLAINTS.

II. That the defendant promised to pay the plaintiff dollars for the same.

III. That he has not paid the same.
 [*Demand of Judgment.*]

No. 37.

ii. *The same at a reasonable price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he sold to the defendant [all the fruit growing on his orchard, in]

II. That the same was reasonably worth dollars.

III. That the defendant has not paid the same.
 [*Demand of Judgment.*]

Sec. 6. COMPLAINTS FOR GOODS SOLD, THE TITLE NOT HAVING PASSED.

No. 38.

i. *For goods made at defendant's request, and not accepted.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant agreed with the plaintiff that the plaintiff should make for him [six tables, fifty chairs and four bureaux,] and that the defendant should pay for the same upon delivery thereof, dollars.

COMPLAINTS.

II. That the plaintiff made the said goods, and on the..... day of, 18.., offered to deliver the same to the defendant, and has ever since been ready and willing so to do.

III. That the defendant has not paid for the same.¹

[*Demand of Judgment.*]

No. 39.

ii. *For deficiency upon a resale [goods sold at auction.]*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he put up at auction sundry [articles of merchandise,] subject to the condition that all goods not paid for and removed by the purchaser thereof, within [ten days] after the sale, should be resold by auction on his account, of which condition the defendant had notice.

II. That the defendant purchased [one crate of crockery] at the said auction at the price of dollars.

III. That the plaintiff was ready and willing to deliver the same to the defendant, on the said day and for [ten days] thereafter, of which the defendant had notice.

IV. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [ten days] after the sale, nor afterward.²

V. That on the day of, 18.., at, the plaintiff resold the said [crate of crockery,] on account of the defendant, by public auction, for dollars.

¹ The fact of non-payment is all that is material; non-acceptance is of no consequence.

² Unless the seller agreed to deliver, it is the purchaser's duty to fetch the goods. (*Bach v. Owen*, 5 T. R., 409.)

COMPLAINTS.

VI. That the expenses attendant upon such resale amounted to dollars.

VII. That the defendant has not paid the deficiency thus arising, amounting to dollars.

[*Demand of Judgment.*]

Sec. 7. COMPLAINTS FOR THE PRICE OF REAL PROPERTY SOLD.

No. 40.

i. *For the purchase money of lands conveyed.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at....., the plaintiff sold¹ and conveyed to the defendant [the house and lot No. 100 State street, in the city of Albany, *or*, a farm known as "Decker's farm" in the town of Coeymans, *or*, a piece of land lying, &c.]

II. That the defendant promised to pay the plaintiff dollars for the said land.

III. That he has not paid the same.

[*Demand of Judgment.*]

No. 41.

ii. *For the purchase money of real property contracted to be sold, but not conveyed.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at....., the plaintiff and defendant mutually agreed that the plaintiff

¹ The word "sold" seems to imply a request.

COMPLAINTS.

should sell to the defendant, and that the defendant should purchase from the plaintiff [the house and lot No. 100 State street, Albany, *or*, one hundred acres of land in the town of Watervliet, Albany county, bounded by the railroad, and by other lands of the plaintiff,] for dollars.

II. That on the day of, 18.., at, the plaintiff tendered [*or*, was ready and willing, and offered to execute] a sufficient deed of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.¹

III. That the defendant has not paid the said sum.

[*Demand of Judgment.*]

Sec. 8. COMPLAINTS FOR SERVICES.

No. 42.

i. *For services, at a fixed price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant [hired him as a clerk, at the salary of dollars per year.]

II. That from the [said day] until the day of, 18.., the plaintiff [served the defendant as his clerk.]

III. That the defendant has not paid the said salary.

[*Demand of Judgment.*]

¹ This averment is necessary. (*Beecher v. Conradt*, 13 N. Y. [3 Kern.], 110.) "Execute" implies delivery. (*Lafayette Ins. Co. v. Rogers*, 30 Barb., 492.)

COMPLAINTS.

No. 43.

ii. *For services, at a reasonable price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That between the day of, 18.., and the day of, 18.., at, he [executed sundry drawings, designs and diagrams,] for the defendant, at his request.

II. That the said services were reasonably worth dollars.

III. That the defendant has not paid the same.

[Demand of Judgment.]

No. 44.

iii. *For services and materials, at a fixed price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he [furnished the paper for and printed one thousand copies of a book called,] for the defendant, at his request [and delivered the same to him.]

II. That the defendant promised to pay dollars therefor.

III. That he has not paid the same.

[Demand of Judgment.]

COMPLAINTS.

No. 45.

iv. *For services and materials at a reasonable price.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of, 18.., at, he built a house [known as No. .. street, in said city,] and furnished the materials therefor, for the defendant, at his request.

II. That the said work and materials were reasonably worth dollars.

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

Sec. 9. COMPLAINTS FOR RENT, BOARD, ETC.

No. 46.

i. *For rent reserved in a lease.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of, 18.., at, the defendant entered into a covenant with the plaintiff,¹ under their hands and seals, a copy of which is hereto annexed.

[*Or state the substance of the agreement.*]

II. That the defendant has not paid the rent of the [quarter] ending on the day of, 18.., amounting to dollars.

[*Demand of Judgment.*]

¹ This allegation necessarily includes the fact of delivery of the instrument.

COMPLAINTS.

No. 47.

ii. *For use and occupation at a fixed rent.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant hired from the plaintiff [the house and lot, No. 100 State street, Albany,] at the rent of dollars, payable on the first days of

II. That the defendant occupied the said premises from the day of, 18.., to the day of, 18...

III. That the defendant has not paid dollars, being the part of said rent due on the first day of, 18...

[Demand of Judgment.]

No. 48.

iii. *For use and occupation at a reasonable rent.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant occupied the [house and lot, No. 100 State street, Albany,] by permission of the plaintiff, from the day of, 18.., until the day of, 18..¹

II. That the use of the said premises for the said period, was reasonably worth dollars.

III. That the defendant has not paid the same.

[Demand of Judgment.]

¹ In this action, the plaintiff need not allege title, and the defendant cannot object to his title. (See *Vernam v. Smith*, 15 N. Y., 329, and cases cited.)

COMPLAINTS.

No. 49.

iv. *For board and lodging.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That from the day of, 18.., until the day of, 18.., the defendant occupied certain rooms in the house [No. 100 State street, Albany,] by permission of the plaintiff, and was furnished by the plaintiff, at his request, with food, attendance and other necessities.

II. That [in consideration thereof, the defendant promised to pay, *or*, the same were reasonably worth] the sum of dollars.

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

Sec. 10. COMPLAINTS BY CARRIERS.

No. 50.

i. *For freight of goods.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., he transported in [his barge, *or otherwise*] [one thousand barrels of flour, *or*, sundry goods] from to, at the request of the defendant.

II. That the defendant promised to pay the plaintiff the sum of [one dollar per barrel] as freight thereon. [*Or*: That such transportation was reasonably worth dollars.]

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

 COMPLAINTS.

No. 51.

ii. *For passage money.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., he conveyed the defendant [in his ship, called the "Daniel Webster,"] from to, at his request.

II. That the defendant promised to pay the plaintiff dollars therefor.

[Or, II. That the said passage was reasonably worth dollars.]

III. That the defendant has not paid the same.

[Demand of Judgment.]

Sec. 11. COMPLAINT ON AN AWARD.

No. 52.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18 .., at, the plaintiff and defendant having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of A. B. and C. D., as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed.]

COMPLAINTS.

II. That on the day of, 18.., at, the said arbitrators awarded that the defendant should [pay the plaintiff dollars.]¹

III. That the defendant has not [paid the same.]²

[Demand of Judgment.]

Sec. 12. COMPLAINTS ON JUDGMENTS.

No. 53.

*On a foreign judgment.**

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, in the state [or, kingdom] of, the court of that [state,] in an action therein pending between the plaintiff and the defendant, duly⁴ adjudged that the defendant should pay to the plaintiff dollars, with interest from the said date.

II. That the defendant has not paid the same.

[Demand of Judgment.]

¹ Unless there was a special agreement, this allegation is sufficient. The arbitrator cannot "award" without "publishing" his award, and "publishing" is a technical phrase, merely implying that the arbitrator has finally disposed of the case. (See *Brooke v. Mitchell*, 6 M. & W., 476.) Notice of the award need not be averred, unless required by the terms of the submission. (2 Saund., 62 u, [4]: see per PARKE, B., 6 M. & W., 474.)

² No demand need be alleged, unless expressly required. (Per BAYLEY, J., *Rowe v. Young*, 2 Brod. & B., 233.)

³ It appears by all the precedents, that the jurisdiction of foreign courts is presumed, and that if they had not in fact jurisdiction, the defendant must show it. (See *Wheeler v. Raymond*, 8 Cow., 314; *Shumway v. Stillman*, 4 Cow., 296; *Harrod v. Barretto*, 1 Hall, 155; *Reynolds v. Fenton*, 3 C. B., 187; *Cowan v. Braidwood*, 1 Man. & Gr., 882; *Ferguson v. Mahon*, 11 Ad. & El., 182.)

⁴ If the judgment was rendered in a justice's court, "duly" must be inserted (Code, § 161; *Thomas v. Robinson*, 3 Wend., 268), and for uniformity, it seems as well to state it in all cases.

COMPLAINTS.

**Sec. 13. COMPLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF
MONEY ONLY.**

No. 54.

1. Against the maker, acceptor, indorser or drawer of a bill of exchange, promissory note, negotiable bond, bank note, check or certificate of deposit, or other instrument for the payment of money only.¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

That there is due to him from the defendant, on an instrument of which a copy is hereto annexed, dollars, with interest from the day of, 18...

[Demand of Judgment.]

[Annex copy of the instrument.]

No. 55.

ii. On a bond for the payment of money only.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff dollars.

II. That he has not paid the same.

[Demand of Judgment.]

¹ This complaint is *sufficient* under section 162 of the Code, but it may be hazardous to use it, unless the plaintiff is certain either that no defense will be attempted, or that he knows the precise ground of defense. For under a general denial, the defendant might interpose any defense he saw fit, either frivolous (*e. g.*, by disputing the day from which interest was due), or based on some ground which might surprise the plaintiff on the trial. It need scarcely be added that the use of this form is not intended to be made compulsory in any sense. Objections have been made to its insertion, but it is clearly provided for by § 162; and that section has been so distorted by judicial construction as to need a form explanatory of its provisions.

COMPLAINTS.

Sec. 14. COMPLAINTS UPON PROMISSORY NOTES.

No. 56.

i. *Payee against maker.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, by his promissory note,¹ promised to pay to the plaintiff dollars, [days] after date, [or, on demand.]²

II. That he has not paid the same [except dollars, paid on the day of, 18...]

[Demand of Judgment.]

No. 57.

ii. *First indorsee against maker.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of 18.., at, the defendant, by his promissory note,¹ promised to pay to the order of one William Brown dollars, [..... days after date.]

II. That the said Brown indorsed the same to the plaintiff.

III. That the defendant has not paid the same.

[Demand of Judgment.]

¹ The date of the note need not be stated. (*Coxon v. Lyon*, 2 Camp., 307, note; see *Smith v. Lord*, 2 Dowl. and L., 761.) But as a variance would be immaterial (*Bentzing v. Scott*, 4 Carr. and P., 24), the plaintiff may transfer the allegation of time and place into one of date, thus:

I. That the defendant, by his promissory note, dated on, at, promised, &c.

² It is not necessary to show that the note was due before the commencement of the action. The complaint would not be demurrable, even if it showed on its face that it was *not* due. (*Smith v. Holmes*, 19 N. Y., 271; *Maynard v. Talcott*, 11 Barb., 569.)

COMPLAINTS.

No. 58.

iii. *Subsequent indorsee against maker.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. [*As in the preceding form.*]

II. That the same was, by the indorsement of the said Brown, and of A. B. and C. D., [*or, and others,*]¹ transferred to the plaintiff

[*Demand of Judgment.*]

No. 59.

iv. *First indorsee against first indorser.*²

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to the plaintiff a promissory note, made [*or, purporting to have been made*] by one William Brown, on the day of, 18..., at, to the order of the defendant, for the sum of dollars, [payable days after date].

II. That on the day of, 18..., the same was presented to the said Brown for payment, but was not paid. [*Or state facts excusing want of presentment.*]

III. That the defendant had notice thereof

IV. That he has not paid the same.

[*Demand of Judgment.*]

¹ It is not necessary to state all the indorsements; but if they are not stated, they must be stricken out at the trial. If stated, they must be proved. The use of the words "and others" will *perhaps* obviate the necessity of proving them, while allowing them to remain on the note.

² The peculiar form of this, and the subsequent complaints against indorsers, is adopted with a view to avoid all danger of misleading the defendant into immaterial issues. He is estopped by his indorsement from denying the making of the note, although the maker's signature might be a forgery; and therefore the only material issue is, *whether he indorsed* such a note.

COMPLAINTS.

No. 60.

v. *Subsequent indorsee against first indorser; the indorsement being special.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to one John Robinson, a promissory note, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at to the order of the defendant, for the sum of dollars [payable days after date].

II. That the same was by the indorsement of the said Robinson [and others] transferred to the plaintiff. [*Or*: That the said Robinson indorsed the same to the plaintiff.]¹

III, IV, and V. [*Same as II, III, and IV, of the preceding form.*]

[*Demand of Judgment.*]

No. 61.

vi. *Subsequent indorsee against his immediate indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to him a promissory note, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, to the order of one John Robinson for the sum of dollars [payable days after date], and indorsed by the said Robinson to the defendant.

II, III, and IV. [*As in No. 59.*]

[*Demand of Judgment.*]

¹ The indorsee, by striking out the intermediate indorsements, of course becomes the immediate indorsee of the first indorser.

COMPLAINTS.

No. 62.

vii. *Subsequent indorsee against intermediate indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That a promissory note, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, to the order of one John Jenks, for the sum of dollars [payable days after date], and indorsed by the said Jenks to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

II, III, IV. [*Same as No. 59.*]

[*Demand of Judgment.*]

No. 63.

viii. *Subsequent indorsee against maker, first and second indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, John Jones, by his promissory note, promised to pay to the order of the defendant, William Brown, dollars, [..... months after date.]

II. That the said Brown indorsed the same to the defendant John Robinson, who indorsed it to the plaintiff.

III. That on the day of, 18.., the same was presented [*or state facts excusing presentment*] to the said John Jones for payment, but was not paid.

IV. That the said William Brown and John Robinson had notice thereof.

V. That they have not paid the same.

[*Demand of Judgment.*]

COMPLAINTS.

No. 64.

Sec. 15. COMPLAINTS ON INLAND BILLS OF EXCHANGE.

i. *Drawer against acceptor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, by his bill of exchange,¹ he required the defendant to pay to him dollars, [..... days after date, *or*, sight thereof.]

II. That the defendant accepted the said bill. [*If the bill is payable at a certain time after "sight," the date of acceptance should be stated, otherwise it is not necessary.*]

III. That he has not paid the same.

[*Demand of Judgment.*]

No. 65.

ii. *Payee against acceptor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant accepted a bill of exchange, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring the defendant to pay to the plaintiff dollars, after sight thereof.²

II. That he has not paid the same.

[*Demand of Judgment.*]

¹ It is not necessary to notice the division of a *set* of bills of exchange.

² The acceptor is estopped from denying the drawer's signature, and this form avoids any temptation to an immaterial issue.

COMPLAINTS.

No. 66.

iii. *First indorsee against acceptor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant accepted a bill of exchange, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring the defendant to pay to the order of one John Robinson dollars, after sight thereof.

II. That the said Robinson indorsed the same to the plaintiff.

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

No. 67.

iv. *Subsequent indorsee against acceptor.*

I. [*As in the preceding form, to the end of art. I.*]

II. That by the indorsement of the said Robinson [and others] the same was transferred to the plaintiff.

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

COMPLAINTS.

No. 68.

v. *Payee against drawer, for non-acceptance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, by his bill of exchange, required one William Brown to pay to the plaintiff dollars, [.... days after sight.]

II. That on the day of, 18.., the same was presented to the said Brown for acceptance, but was not accepted.

III. That the defendant had notice thereof.

IV. That he has not paid the same.

[*Demand of Judgment.*]

No. 69.

vi. *First indorsee against first indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to the plaintiff a bill of exchange, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring one John Robinson to pay to the order of the defendant dollars [days] after sight [*or*, after date, *or*, at sight] thereof; [and accepted by the said Robinson on the day of....., 18...]

II. That on the day of, 18.., the same was presented to the said Robinson for payment, but was not paid.

III. That the defendant had notice thereof.

IV. That he has not paid the same.

[*Demand of Judgment.*]

COMPLAINTS.

No. 70.

vii. *Subsequent indorsee against first indorser; the indorsement being special.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to one John Jenks a bill of exchange, made [or, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring one John Robinson to pay to the order of the defendant, dollars, days after sight thereof [or otherwise], and accepted by the said Robinson on the day of, 18... [*This clause may be omitted, if not according to the fact.*]

II. That the same was, by the indorsement of the said Jenks [and others], transferred to the plaintiff.

III, IV and V. [*Same as II, III and IV, in the preceding form.*]

[Demand of Judgment.]

No. 71.

viii. *Subsequent indorsee against his immediate indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the defendant indorsed to him a bill of exchange, made [or, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring one John Robinson to pay to the order of one John Jenks, dollars, days after sight thereof [or otherwise], [accepted by the said Robinson], and indorsed by the said Jenks to the defendant.

II, III and IV. [*As in No. 69.*]

[Demand of Judgment.]

COMPLAINTS.

No. 72.

ix. *Subsequent indorsee against intermediate indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That a bill of exchange, made [*or*, purporting to have been made] by one William Brown, on the day of, 18.., at, requiring one John Robinson to pay to the order of one John Jenks, dollars, days after sight thereof, [*or otherwise*] [accepted by the said Robinson,] and indorsed by the said Jenks to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

II, III, IV. [*Same as No. 69.*]

[*Demand of Judgment.*]

No. 73.

x. *Indorsee against drawer, acceptor and indorser.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, John Jones, by his bill of exchange, required the defendant, William Brown, to pay to the order of the defendant, John Robinson, dollars, [.... days after sight thereof.]

II. That on the day of, 18.., the said Brown accepted the same.

III. That the said Robinson indorsed the same to the plaintiff.

IV. That on the day of, 18.., the same was presented to the said Brown for payment, but was not paid.

V. That the other defendants had notice thereof.

VI. That they have not paid the same.

[*Demand of Judgment.*]

COMPLAINTS.

Sec. 16. COMPLAINTS ON FOREIGN BILLS OF EXCHANGE.

No. 74.

i. *Payee against drawer, for non-acceptance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, by his bill of exchange, required one John Robinson to pay to the plaintiff, in [London,] [pounds sterling, sixty days] after sight thereof

II. That on the day of, 18.., the same was presented to the said Robinson for acceptance, but was not accepted, and was thereupon duly protested.

III. That the defendant had notice thereof.

IV. That he has not paid the same.

[V. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was dollars.]

Wherefore the plaintiff demands judgment against the defendant for dollars, with [ten per centum] damages, and interest from the day of, 18...

No. 75.

ii. *Payee against acceptor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at [Havana, Cuba,] one William Brown, by his bill of exchange, required the defendant to pay to the plaintiff dollars, [..... days after sight] thereof

COMPLAINTS.

II. That on the day of, 18.., the defendant accepted the said bill.

III. That he has not paid the same.

[*Demand of Judgment.*]

Sec. 17. COMPLAINTS ON INSURANCE POLICIES, AGAINST A CORPORATION.

No. 76.

i. *On a marine (open) policy, on vessel lost by perils of the sea.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he was the owner of [*or, had an interest in*]¹ the ship [Northumberland,] at the time of its loss, as hereafter mentioned.

II. That on the day of, 18.., at, the defendant, in consideration of dollars to it paid, [*or, which the plaintiff then promised to pay,*] executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [*or, whereby it promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during its next voyage from to, whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding dollars.*]²

III. That the said vessel, while proceeding on the voyage mentioned in the said policy, was, on the day of, 18.., totally lost by the perils of the sea, [*or otherwise.*]

IV. That the plaintiff's loss thereby was dollars.

¹ This is sufficient. (*Page v. Fry*, 2 Bos. & Pul., 240; *Crawford v. Hunter*, 8 T. R., 23.)

² The perils specifically mentioned should be such as actually occasioned the loss.

COMPLAINTS.

V. That on the day of, 18.., he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

VI. That the defendant has not paid the said loss.

[*Demand of Judgment.*]

No. 77.

ii. *On cargo, lost by fire;—valued policy.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he was the owner of [*or, had an interest in*] [one hundred bales of cotton] on board the ship [Henry Clay], at the time of its loss as hereafter mentioned.

II. That on the day of, 18.., at, the defendant in consideration of dollars, which the plaintiff then paid, [*or, promised to pay,*] executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed; [*or, whereby it promised to pay to the plaintiff* dollars in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at; *or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should exceed* per centum of the whole value of the goods.]

III. That on the day of, 18.., at, while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire.

IV, and V. [*As in paragraphs V and VI of the preceding form.*]

[*Demand of Judgment.*]

COMPLAINTS.

No. 78.

iii. *On freight; — valued policy.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he had an interest in the freight to be earned by the ship [Siddons] on her voyage from to, at the time of her loss as hereafter mentioned, and that a large quantity of goods were shipped upon freight in her at that time.

II. That on the day of 18.., at, the defendant, in consideration of dollars to it paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed, [*or state its tenor, as before.*]

III. That the said vessel, while proceeding upon the voyage mentioned in the said policy, was, on the day of, 18.., totally lost by [the perils of the sea.]

IV. That the plaintiff has not received any freight from the said vessel, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

V, and VI [*As in form No. 76.*]

[*Demand of Judgment.*]

No. 79.

iv. *For a loss by general average.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he was the owner of [*or, had an interest in*] [one hundred bales of cotton] shipped on board a vessel called the A. Z., from to, at the time of the loss hereafter mentioned.

COMPLAINTS.

II. That on the day of, 18.., at, in consideration of dollars, [which the plaintiff then promised to pay,] the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed, [*or state its tenor, as before.*]

III. That on the day of, 18.., while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did cast into the sea a large part of her rigging and furniture.

IV. That the plaintiff was, by reason thereof, compelled to and did pay a general average loss of dollars.

V. That on the day of, 18.., he furnished the defendant with proof of his loss and interest and otherwise duly performed all the conditions of the said policy on his part.

VI. That the defendant has not paid the said loss.

[*Demand of Judgment.*]

No. 80,

v. *For a particular average loss.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I, and II. [*As in the preceding form.*]

III. That on the day of, 18.., while on the high seas, the sea water broke into the said ship, and damaged the said [cotton] to the amount of dollars.

IV. [*As in Art. V, of the preceding form.*]

V. [*As in Art. VI, of the preceding form.*]

[*Demand of Judgment.*]

COMPLAINTS.

No. 81.

vi. *On a fire insurance policy.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he [was the owner of, *or*,] had an interest in a [dwelling house, known as No. 100 State street, in the city of Albany,] at the time of its destruction [*or*, injury] by fire as hereafter mentioned.

II. That on the day of, 18.., at, in consideration of dollars [to it paid,] the defendant executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed; [*or state its tenor*.]

III. That on the day of, 18.., the said [dwelling house] was totally destroyed [*or*, greatly damaged] by fire.¹

IV. That the plaintiff's loss thereby was dollars.

V. That on the day of, 18.., he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

VI. That the defendant has not paid the said loss.

[*Demand of Judgment*.]

¹ It is not necessary to state that the fire was not caused by invasion, riot, &c. That is matter of defense. (*Lounsbury v. Protection Ins. Co.*, 8 Conn., 466; *Rucker v. Green*, 15 East, 290; see *Hunt v. Hudson River Ins. Co.*, 2 Duer, 487; *Catlin v. Springfield Fire Ins. Co.*, 1 Sumner, 439.) The remarks in *Phil. Ins.* (2d ed.), 642; *Ellis Ins.*, 95; are not sustained by any decision.

COMPLAINTS.

No. 82.

vii. *On a fire policy, correcting an alleged mistake.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he was the owner of a [woolen factory, and the machinery therein,] in the town of, county of, at the time of its destruction by fire, as hereafter mentioned.

II. That on the day of, 18.., at, in consideration of dollars to it paid, the defendant executed to the plaintiff a policy of insurance on the said property, a copy of which is hereto annexed.

III. That on the day of, 18.., the said property was totally destroyed by fire.

IV. That the plaintiff's loss thereby amounted to more upon each part of the property separately insured, than the amount of such separate insurance.

V. That on the day of, 18.., he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

VI. That the defendant has not paid the said loss.

VII. That the survey referred to in the said policy, and made a part of the same, contains, among others, the following questions and answers:

"*Question.* Is there a watchman in the mill during the night? Is there also a good watch clock?

"*Answer.* There is a watchman nights; no clock; bell is struck every hour, from 8, P. M., till it rings for work in the morning.

"*Question.* Is the mill left alone at any time, after the watchman goes off duty in the morning till he returns to his charge in the evening?

COMPLAINTS.

"*Answer.* Only at meal times, and on the Sabbath, and other days when the mill does not run."

VIII. That the said questions and answers were not meant or understood, by either of the parties, to be a warranty.

IX. That the plaintiff, by his answers aforesaid, did not mean, nor did the defendant understand him to represent, that there was a watchman in the said mill from midnight on Saturdays to midnight on Sundays; but the defendant then knew that no watchman was in the said mill at such times; and if the said questions and answers do in law convey such an idea, it is through mistake only.

Wherefore, the plaintiff demands judgment for dollars.

[*Annex a copy of the Policy.*]

No. 83.

viii. *On a life policy, in favor of a wife.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, in consideration of the [annual] payment to it of dollars, executed to the plaintiff a policy of insurance on the life of her husband, John Smith, of which a copy is hereto annexed; [*or*, whereby it promised to pay to the plaintiff dollars, days after proof of the death of the said John Smith.]

II. That the plaintiff had a valuable interest in the life of the said John Smith,¹ at the time of his death; [*or*, at the time of effecting the said insurance.*]

III. That on the day of, 18.., at, the said John Smith died.

¹ This fact is material, and should be alleged. (See 20 N. Y., 38.)

² It is sufficient to show that the plaintiff had an interest at the time of making the insurance. (*Dalby v. India and London Life Ins. Co.*, 15 C. B., 365.)

COMPLAINTS.

IV. That on the day of, 18.., the plaintiff furnished the defendant with proof of the death of the said John Smith, and otherwise duly performed all the conditions of the said policy on her part.

V. That the defendant has not paid the said sum.

[*Demand of Judgment.*]

[*Annex a copy of the Policy.*]

No. 84.

Sec. 18. COMPLAINT ON A GUARANTY.

Against sureties for payment of rent.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, one William Brown hired from the plaintiff, for the term of years, the [house No. 100 State street, Albany,] at the annual rent of dollars, payable [quarterly.]

II. That, [at the same time and place,] the defendant agreed, in consideration of the letting of the said premises to the said Brown, ¹ to guarantee the punctual payment of the said rent.

III. That the rent aforesaid for the quarter ending on the day of 18.., amounting to dollars, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add:*

IV. That on the day of, 18.., the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

V. That he has not paid the same.]

[*Demand of Judgment.*]

¹ This is a sufficient statement of consideration. (See *Caballero v. Slater*, 14 C. B., 303.)

COMPLAINTS.

Sec. 19. COMPLAINTS ON DEBTS CREATED BY STATUTE.

No. 85.

i. *Against a sheriff for an escape from imprisonment under an execution.*

[TITLE]

[COUNTY.]

The plaintiff complains, and alleges:

I. That at the time of the escape hereafter mentioned, the defendant was the sheriff of the county of, in this state.

II. That on the day of, 18.., at, judgment was duly¹ rendered in an action in the court, in favor of the plaintiff against one William Brown, for dollars.

III. That on the day of, 18.., at, an order of arrest was duly² granted in the said action against the said Brown, by, a justice of the said court, [*or*, county judge of county.]

[*Or*, III. That the said action was brought for a willful injury to the plaintiff's property. *Or otherwise show that the action was one in which an arrest was proper.*³]

IV. That on the day of, 18.., an execution against the person⁴ of the said Brown was issued upon the

¹ The word "duly" is not necessary if the action was brought in a court of general jurisdiction.

² "Duly" is necessary here. (Code, § 161.)

³ Such an allegation is sufficient, even where the action was for a fraudulently contracted debt (*French v. Willett*, 4 Bosw., 651, 652), although it is held that in *such* an action an execution against the person cannot be allowed, unless an order of arrest was obtained before judgment. (*Knedenburgh v. Morgan*, 18 How., 469; corrected, 4 Bosw., 646; see *Humphrey v. Brown*, 17 How., 481; *Alden v. Sarson*, 4 Abb., 102.)

⁴ Although an execution against property ought first to be issued, and returned unsatisfied (Code, § 288), yet the issuing of such an execution need not be pleaded, and its non-issuance is no defense for the sheriff. (*Renick v. Orser*, 4 Bosw., 389.)

COMPLAINTS.

said judgment, directed and delivered to the defendant, as sheriff aforesaid.

V. That afterwards the defendant arrested the said Brown and committed him to jail, pursuant to the said execution.

VI. That on the day of, 18.., the said Brown escaped.¹

Wherefore the plaintiff demands judgment for [*the amount of the judgment against the prisoner.*]²

No. 86.

ii. *For penalty for selling liquor without a license under the act of April 16, 1857.*

SUPREME COURT.

THE BOARD OF COMMISSIONERS OF EXCISE OF THE COUNTY OF <i>against</i> JOHN SMITH.	}	COUNTY OF.....
--	---	----------------

The plaintiffs complain, and allege:

I. That on the day of, 18.., at, the defendant sold to one William Jones [*or, to divers persons*] strong liquors [*or, spirituous liquors, or, wines,*] in quantities less than five gallons at a time.

II. That the defendant had not then a license to sell liquors.

Wherefore the plaintiffs demand judgment for fifty dollars.

¹ It is not necessary to allege that the sheriff *permitted* him to escape. (See 3 R. S. (5th ed.), 736 [2 id., 437].)

² The sheriff is liable, as for a *debt*, for the full amount of the judgment (3 R. S., (5th ed.) 736 [2 id., 437].)

COMPLAINTS.

No. 87.

iii. *For penalty for publicly keeping liquor on Sunday, within the metropolitan police district.*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK <i>against</i> JOHN SMITH.	}	COUNTY OF.....
---	---	----------------

The plaintiffs complain, and allege:

That the defendant, on Sunday, the day of,
 18.., at, publicly kept [*or, sold*] intoxicating liquors.¹

Wherefore the plaintiffs demand judgment for fifty dollars.

Sec. 20. COMPLAINT FOR SEVERAL CAUSES OF ACTION.

No. 88.

For goods, notes and services.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

First: For a first claim:

I That on the day of, 18.., at, he
 sold and delivered to the defendant [one hundred barrels of flour.]

II. That the same were reasonably worth dollars.

III. That the defendant has not paid the same.

Second: For a second claim:

I That on the day of, 18.., at,
 the defendant, by his promissory note, promised to pay the
 plaintiff dollars, days after date.

II. That the defendant has not paid the same.

¹ The words of the statute are, "publicly kept or disposed of." (And see *People v. Bennett*, 5 Abb., 384.)

COMPLAINTS.

Third: For a third claim:

I. That on the day of, 18.., at, the defendant hired the plaintiff as [a salesman,] at a salary of dollars per [year.]

II. That from that day until the day of, 18.., the plaintiff served the defendant as such [salesman.]

III. That the defendant has not paid the said salary.

Wherefore the plaintiff demands judgment for..... dollars, with interest from the day of18..

[Or: 1. For dollars, with interest from, &c.;

2. For dollars, with interest from, &c.]

COMPLAINTS.

TITLE IV.

FOR DAMAGES ON BREACH OF CONTRACT.

- SECTION 1. On contract for the sale of land.
 2. On contract for the sale of chattels.
 3. On contract for services.
 4. On apprenticeship agreements.
 5. On bonds and undertakings.
 6. On covenants for title or possession.
 7. On warranties.
 8. On agreements of indemnity.
 9. On charter parties.

Sec. 1. COMPLAINTS ON BREACH OF CONTRACT FOR THE SALE OF
 LAND

No. 89.

i. *For breach of agreement to convey.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of, 18.., at, the plaintiff and defendant entered into an agreement under their hands and seals, of which a copy is hereto annexed.

[Or, I. That on, &c., the defendant agreed with the plaintiff that in consideration of the sum of one dollar then paid, and of the further sum of ten thousand dollars payable as hereafter mentioned, he would, on the day of, 18.., at, execute to the plaintiff a good and sufficient conveyance of the house No. 100 State street in the city of Albany, free from all incumbrances; and the plaintiff agreed to pay ten thousand dollars for the same on delivery thereof.]

II. That on the day of, 18.., the plaintiff demanded the conveyance of the said property from the defendant, and tendered dollars to the defendant [or, was ready and willing, and offered to the defendant to pay

COMPLAINTS.

dollars and duly to perform all his agreements under the said covenant, upon the like performance by the defendant.]¹

III. That on the day of, 18.., the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to execute the same.]²

IV. That the defendant has not executed any conveyance of the said property to the plaintiff.

[*Or*, IV. That there is a mortgage upon the said property, made by to, for dollars, recorded in the office of, on the day of 18.., and still unsatisfied of record, *or any other defect of title.*]

Wherefore the plaintiff demands judgment for dollars, damages.³

No. 90.

ii. *For breach of agreement to purchase.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant entered into an agreement, under their hands and seals, of which a copy is hereto annexed.

¹ This averment is necessary. (*Beecher v. Conradt*, 13 N. Y. [3 Kern.,] 110; *Lester v. Jewett*, 11 N. Y. [1 Kern.,] 453.)

² It is necessary either to tender a deed for signature or to wait a reasonable time for its preparation by the vendor, and make a second demand (*Luttweller v. Linnell*, 12 Barb., 512; *Connolly v. Pierce*, 7 Wend., 136; *Huckett v. Huson*, 3 Wend., 250; *Fuller v. Hubbard*, 6 Cow., 17.) But if the vendor, on the first demand, positively refuse to convey, nothing more need be done. (*Carpenter v. Brown*, 6 Barb., 147; *Driggs v. Dwight*, 17 Wend., 74.)

³ We think it entirely unnecessary, and often undesirable, to state that the plaintiff's damage amounted to any particular sum. All allegations of damage (other than special), are abolished in England, and as they are nowhere required by the Code, nor by the reason of the thing, we have entirely omitted them. (See *Harper v. Chamberlain*, 11 Abb., 238, 239, 240.)

COMPLAINTS.

[Or, I. That on the day of, 18.., at, the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty acres of land in the town of, county of, bounded, for dollars.]

II. That on the day of, 18.., at, the plaintiff, being then the owner in fee simple of the said property, [and the same being free from all incumbrances, as was made to appear to the defendant,] tendered to the defendant a sufficient deed of conveyance of the same, [or, was ready and willing, and offered, to convey the same to the defendant by a sufficient deed,] on the payment by the defendant of the said sum.¹

III. That the defendant has not paid the same.

[*Demand of Judgment.*]

Sec. 2. COMPLAINTS ON BREACH OF CONTRACT FOR THE SALE OF
CHATTELS.

No. 91.

i. *For not delivering goods sold.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of, 18..,] and that the plaintiff should pay therefor dollars on delivery.

¹ See *Beecher v. Conradt*, 13 N. Y. [3 Kern.], 110; *Lester v. Jewett*, 11 N. Y. [1 Kern.], 453.

COMPLAINTS.

II. That on the [said] day, the plaintiff was ready and willing, and offered, to pay the defendant the said sum, upon delivery of the said goods.¹

III. That the defendant has not delivered the same.

[*Demand of Judgment.*]

Sec. 3. COMPLAINTS ON BREACH OF CONTRACT FOR SERVICES.

No. 92.

i. *For breach of contract to employ.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant,] and that the defendant should employ the plaintiff as such, for the term of [one year,] and pay him for his services dollars [monthly.]

II. That on the day of 18.., the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service.²

III. That on the day of, 18.., the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*Demand of Judgment.*]

¹ See *Smith v. Wright*, 1 Abb., 243, 247; *Lester v. Jewett*, 11 N. Y. [1 Kern.], 453.

² When the plaintiff has been wrongfully discharged, this averment is all that is necessary. He need not *offer* to serve. (*Wallis v. Warren*, 4 Exch., 364; 7 Dowl. & L., 60.)

COMPLAINTS.

No. 93.

ii. *The same; where the employment never took effect.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. [*As in preceding form.*]

II. That on the day of, 18..., at, the plaintiff offered to enter upon the service of the defendant and has ever since been ready and willing so to do.

III. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of Judgment.*]

No. 94.

iii. *For breach of contract to serve.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at [an annual] compensation of dollars, and that the defendant should serve the plaintiff as [an artist,] for the term of [one year.]

II. That the plaintiff has always been ready and willing to perform his part of the said agreement, [and on the day of, 18..., offered so to do.]¹

¹ If the defendant willfully deserted the plaintiff's service, the latter need not offer to employ him.

COMPLAINTS.

III. That the defendant [entered upon the service of the plaintiff on the above mentioned day, but afterwards, on the day of, 18 .., he] refused to serve the plaintiff as aforesaid.

[*Demand of Judgment.*]

No. 95.

1v. *Against a builder, for defective workmanship*

[TITLE.]

[COUNTRY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed: [*or state the tenor of the contract.*]

[II. That the plaintiff duly performed all the conditions of the said agreement on his part.]¹

III. That the defendant built the house referred to in the said agreement in a bad and unworkmanlike manner.

[*Demand of Judgment.*]

Sec. 4. COMPLAINTS FOR BREACH OF CONTRACT OF APPRENTICESHIP.

No. 96.

i. *By the master, against the father.*

[TITLE.]

[COUNTRY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, one [*name of apprentice*], with the consent of the defendant, made

¹ Perhaps this is not necessary. The covenants in a builder's contract are usually independent, and if so, performance need not be averred.

COMPLAINTS.

an indenture under his hand and seal, a copy of which is hereto annexed.

II. That at the same time and place, the defendant entered into an agreement under his hand and seal, a copy of which is also hereto annexed.

[*Or state the tenor of these covenants.*]

III. That on the day of, 18..., the said [apprentice] willfully absented himself from the service of the plaintiff, and continues so to do.¹

[*Demand of Judgment.*]

No. 97.

ii. *By the apprentice against the master.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, the defendant entered into an agreement with the plaintiff and his father, James Smith, under his and their hands and seals, a copy of which is hereto annexed.

II. That the defendant has not [instructed the plaintiff in the business of, or state any other breach.¹]

[*Demand of Judgment.*]

¹ The usual covenants in an apprentice's indenture are independent, and the plaintiff need not aver performance on his part. (*Phillips v. Clift*, 4 Hurl & Nor., 173.)

COMPLAINTS.

Sec. 5. COMPLAINTS ON BONDS AND UNDERTAKINGS.

No. 98.

i. *On a bond for the fidelity of a clerk.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he employed one John Johnson as a clerk.

II. That on the day of, 18.., at, the defendant covenanted with the plaintiff, under his hand and seal, that if the said Johnson should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding dollars.

[Or, II. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand and seal, in the penal sum of dollars, conditioned that if the said Johnson should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[Or, II. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is annexed.]

III. That between the day of, 18.., and the day of, 18.., the said Johnson received money and other property, amounting to the value of dollars, for the use of the plaintiff, for which he has not accounted to him.

[Demand of Judgment.]

COMPLAINTS.

No. 99.

ii. *On an undertaking of bail.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, an order of arrest was duly¹ granted by A. B., a justice of the court, against one John Johnson, in an action brought in the said court by the plaintiff against the said Johnson; and thereupon the said Johnson was arrested by the sheriff of the county of

II. That on the day of, 18.., at, the defendants undertook, in the sum of dollars, that the said Johnson should, if released, render himself at all times amenable to the process of the court during the pendency of the said action, and to such as might be issued to enforce the judgment therein.

III. That thereupon the said Johnson was released.

IV. That on the day of, 18.., judgment was rendered for the plaintiff in the said action for dollars.

V. That on the day of, 18.., execution was issued against the person of the said Johnson, under the said judgment, but the sheriff has made return that he could not be found.²

VI. That the said judgment has not been paid

[Demand of Judgment.]

¹ Code, § 161.

² It is not necessary to state the issuing of an execution against property, as if none was issued; the execution against the person would be only irregular, and not void. (*Renick v. Orser*, 4 Bosw., 389.)

COMPLAINTS.

No. 100.

Sec. 6. COMPLAINTS ON COVENANTS OF TITLE, OR FOR QUIET POSSESSION.

i. *By grantee against grantor.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, in consideration ofdollars to him paid, granted to the plaintiff, by deed, [a certain farm lying in the town of, and bounded northerly by land of one A. B., southerly and easterly by land of one C. D., and westerly by land of one E. F., and containing about acres,] and in his said deed warranted that he had good title in fee simple to the said property, and would defend the defendant in his possession of the same.

II. That the defendant was not, but one William Brown was then the lawful owner of the said lands in fee simple.

III. That on the day of, 18.., the said Brown lawfully evicted the plaintiff from the same, and still withholds the possession thereof from him.

[Demand of Judgment.]

No. 101.

ii. *By tenant against landlord, with special damage.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, by deed, [or, lease under seal,] let to the plaintiff [the house No. 100 State street, Albany,] for the term of

COMPLAINTS.

years, covenanting that the plaintiff should quietly enjoy possession thereof for the said term.

II. That on, one William Brown, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

III. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend dollars in moving, and lost the custom of James Jenks and John Johnson, by such removal.]

[Demand of Judgment.]

Sec. 7. COMPLAINTS ON WARRANTIES.

No. 102.

i. *For breach of warranty of chattels.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of, 18.., at, the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him dollars therefor.

II. That the said engine was not then in good working order.

[Demand of Judgment.]

COMPLAINTS.

No. 103.

ii. *For breach of warranty of real estate.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant warranted a certain farm in to contain [forty] acres of land, and thereby induced the plaintiff to purchase the same from him, and to pay him dollars therefor.

II. That the said farm contained only [thirty] acres.

[Demand of Judgment.]

Sec. 8. COMPLAINT ON AN AGREEMENT OF INDEMNITY.

No. 104.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant, being partners in trade under the firm of Smith & Jones, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

II. That the plaintiff duly performed all the conditions of the said agreement on his part.

III. That on the day of, 18.., [a judgment was recovered against the plaintiff and defendant by one William Brown, in the supreme court, upon a debt due from the said firm to the said Brown, and on the day of, 18..,] the plaintiff paid dollars [in satisfaction of the same.]

IV. That the defendant has not paid the same to the plaintiff

[Demand of Judgment.]

COMPLAINTS.

Sec. 9. COMPLAINT ON A CHARTER-PARTY.

No. 105.

By owner against freightor, for not loading.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[Or, I. That on, at, the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship "Adirondac," at, on the day of, 18.., five hundred tons of merchandise, which she should carry to, and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at dollars per day.]

II. That at the time fixed by the said agreement, the plaintiff was ready and willing, and offered to receive [the said merchandise, or, the merchandise mentioned in the said agreement,] from the defendant.

III. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for dollars for demurrage, and dollars additional for damages.

 COMPLAINTS.

TITLE V.

FOR DAMAGES UPON WRONGS.

- SECTION 1. For trespass on property.
 2. For conversion of personal property.
 3. Against bailees.
 4. Against sheriffs.
 5. For deceit.
 6. For nuisances.
 7. For waste.
 8. For personal injuries.
 9. For defamation.

Sec. 1. COMPLAINTS FOR TRESPASS.

No. 106.

i. *For trespass on land.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

That on the day of, 18.., at, the defendant entered¹ upon the plaintiff's farm [*or*, lot] known as, [*or*, into the plaintiff's house, No. street;] [and trod down the grass, cut the timber, and otherwise injured the same.]

[*Demand of Judgment.*]

¹ It is not necessary to state that the defendant "broke" the plaintiff's close. (*Wells v. Howell*, 19 Johns, 385; and see *Tnawanda Railroad Company v. Munger*, 5 Denio, 259.)

COMPLAINTS.

No. 107.

ii. *For trespass on chattels.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

That on the day of, 18.., at, the defendant broke open ten barrels of rum¹ belonging to the plaintiff, and emptied their contents into the street, [*or otherwise state the injury according to the facts.*]

[*Demand of Judgment.*]

Sec. 2. COMPLAINT FOR THE CONVERSION OF PERSONAL PROPERTY.

No. 108.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., he owned certain goods described in the schedule hereto annexed, [*or, one thousand barrels of flour.*']

II. That on that day, at, the defendant converted the same to his own use.²

[*Demand of Judgment.*]

¹ We omit all statements of the value of the goods. They are not material in this class of actions.

² This is a sufficient allegation of the conversion. It is not necessary to state the mode in which the defendant appropriated the property. (*Decker v. Matthews*, 12 N. Y. [2 Kern.], 321, 324.)

 COMPLAINTS.

Sec. 3. COMPLAINTS AGAINST A BAILEE.

No. 109.

Against a warehouseman for refusal to deliver goods.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, in consideration of the payment to him of dollars, [*or*, cents per barrel, per month, &c.,] agreed to keep in his store [one hundred barrels of flour,]¹ and to deliver the same to the plaintiff, on payment of the said sum.

II. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour.]

III. That on the day of, 18.., the plaintiff requested the defendant to deliver the said goods, and tendered him dollars, [*or*, the full amount of storage due thereon,] but the defendant refused to deliver the same.

[Demand of Judgment.]

Sec. 4. COMPLAINTS AGAINST SHERIFFS.

No. 110.

i. *For not executing process.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That at the time of issuing the execution hereafter mentioned, the defendant was the sheriff of the county of, in this state.

¹ Though it is usual to aver that the goods were the property of the plaintiff, it does not seem to be necessary. He could sue in his own name, if he were but the agent of the owner.

COMPLAINTS.

II. That on the day of, 18.., at, judgment was [duly] rendered in an action in the court, in favor of the plaintiff, against one William Brown, for dollars.

III. That on the day of, 18.., an execution against the property of the said Brown was issued upon the said judgment, directed and delivered to the defendant as sheriff aforesaid.¹

IV. That on that day the said William Brown had [a large quantity of hardware in his store, No. 100 State street, Albany, and owned the said store and lot] in the said county, out of which the said execution might have been satisfied; of which the defendant had notice.

V. That he neglected to levy the amount of the said execution, or any part thereof; [*or if he levied a part, specify it.*]

[*Demand of Judgment.*]

No. 111.

ii. *For false return.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That at the time of issuing the execution hereafter mentioned, the defendant was the sheriff of the county of, in this state.

II. That on the day of, 18.., at, judgment was [duly] rendered in an action in the court, in favor of the plaintiff against one William Brown, for dollars.

III. That on the day of, 18.., an execution against the property of the said Brown was issued upon

¹ It cannot be necessary to state the terms of the execution. The court takes judicial notice of its own forms of proceeding.

COMPLAINTS.

the said judgment, directed and delivered to the defendant, as sheriff aforesaid.

IV. That the defendant levied, under the said execution, on property of the said Brown [of the value of dollars, or, sufficient to satisfy the said judgment, with all the expenses of the execution,]¹ [or, *state particulars of property on which he might have levied; as in art. IV of preceding form.*]

V. That the defendant afterwards falsely returned upon the said execution, to the clerk of the county of, that the said Brown had no property in his county on which he could levy the amount of the said judgment, or any part thereof

[*Demand of Judgment.*]

Sec. 5. COMPLAINTS IN ACTIONS FOR DECEIT.

No. 112.

i. *For procuring property by fraud.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth dollars over all his liabilities.]

II. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of dollars.

III. That the said representations were false [*or state the particular falsehoods*], and were then known by the defendant to be so.

IV. That the defendant has not paid for the said goods. [*Or if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods, and procuring their restoration, expended dollars.*]

[*Demand of Judgment.*]

¹ The defendant may well be supposed to know the particulars. It cannot be necessary that the plaintiff should state them.

COMPLAINTS.

No. 113.

ii. *For fraud in inducing the plaintiff to enter into a speculation in coal lands.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on or about the day of, 18.., the defendant proposed to the plaintiff that they should purchase, on joint account, some coal lands, and a charter for a coal company in Maryland.

II. That the defendant informed the plaintiff that the X. coal company had a charter and some valuable coal lands, which could be purchased for dollars and no less.

III. That the defendant at the same time represented to the plaintiff that he should pay dollars in cash, and his promissory note for dollars, as his share of the said purchase money.

IV. That the plaintiff was thereby induced to give to the defendant, as his share of the purchase money, dollars in cash, and his promissory note, dated the day of, 18.., payable months thereafter, for dollars.

V. That all the said representations of the defendant were false, and he then knew them to be so.

VI. That the said lands were not coal lands, and were not worth more than dollars.

VII. That the defendant purchased the same, with the charter aforesaid, for dollars in cash, certain bonds worth not more than dollars, and his own note for dollars; and gave no other consideration for the same.

Wherefore the plaintiff demands judgment for dollars damages.

[Or, 1. That the said note of the plaintiff be surrendered to him;

2. For dollars damages.]

COMPLAINTS.

No. 114.

iii. *For fraudulently procuring credit to be given to another person.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, the defendant represented to the plaintiff, that one A. B. was solvent and in good credit, and worth dollars over all his liabilities.

II. That the plaintiff was thereby induced to sell to the said A. B., [dry goods] of the value of dollars [on months' credit.]

III. That the said representations were false, and were then known by the defendant to be so; and were made by him with intent to deceive and defraud the plaintiff;¹ [or, to deceive and injure the plaintiff.]

IV. That the said A. B. [did not pay for the said goods at the expiration of the credit aforesaid, or,] has not paid for the said goods, and the plaintiff has wholly lost the same by reason of the premises.

[Demand of Judgment.]

No. 115.

iv. *Against directors of a corporation, for damages caused by their misrepresentations.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That before the time hereafter mentioned, at, a corporation was formed, or pretended to be formed, for the purpose of insuring property against losses by fire, and for other purposes; which corporation was named the insurance company.

¹ As to the necessity of this averment, see *Zabriske v. Smith*, 13 N. Y. [3 Kern.], 330; *Addington v. Allen*, 11 Wend., 386.

COMPLAINTS.

II. That the said company was organized, or pretended to be organized, under the provisions of a law of this state, passed April 10, 1849, entitled "An act to provide for the incorporation of Insurance Companies."

III. That the charter of the said company provided, among other things, that the capital thereof should be [two hundred thousand] dollars, to be paid up in cash.

IV. That at the times hereafter mentioned [or, from the day of, 18.., until the day of, 18..], the defendants were [or, represented themselves to be] directors of the said company.

V. That at sundry times, between the day of, 18.., and the day of, 18.., the defendants represented to the public at large [or, to the plaintiff], that the said company had a paid-up cash capital of [two hundred thousand] dollars.

VI. That on the day of, 18.., at, the defendants published a statement showing that the profits of the said company amounted to [ten thousand] dollars, and declared a dividend of [four per centum.]

VII. That the said representations were wholly false, and were then known by the defendants to be so, and were made with intent to deceive and defraud the public [or, the plaintiff], and to induce persons [or, him] to insure with the said company. That the said company never had a cash capital of more than [twenty thousand] dollars, and had not, on the said day of, 18.., made more than [two thousand] dollars profits.

VIII. That by the said representations the plaintiff was induced to insure with the said company; which accordingly issued to him a policy of insurance, of which a copy is hereto annexed.

IX. That on the day of, 18.., the property mentioned in the said policy was destroyed or greatly injured by fire, and the plaintiff's loss thereon amounted to dollars.

COMPLAINTS.

X. That on the day of, 18.., at, the plaintiff obtained judgment against the said company, upon the said policy, for dollars, in the court of

XI. That on the [same day] an execution was issued upon the said judgment, against the property of the said company, to the sheriff of the county of, which was returned wholly unsatisfied.

XII. That by reason of the premises, the plaintiff has lost the whole amount of the said judgment.

[*Demand of Judgment.*]

Sec. 6. COMPLAINTS FOR NUISANCES.

No. 116.

i. *For erecting a nuisance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at all the times hereafter mentioned was, possessed of [the house and lot No. 100 State street, Albany.]

II. That on the day of, 18.., the defendant erected upon the lot [No. 98 State street, Albany,] a slaughter-house, and still maintains the same, and from the said day until the present time has continually caused cattle to be brought and killed there, [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff.]

III. [*State special damage.*]

[*Demand of Judgment.*]

COMPLAINTS.

No. 117.

ii. *For damages caused by the continuance of a nuisance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at all the times hereafter mentioned was, possessed of [the house and lot No. 100 State street, Albany.]

II. That ever since the day of, 18.., the defendant has maintained a slaughter-house on the [lot No. 98 State street, Albany, &c., as in the preceding form.]

III. That on the day of, 18.., the plaintiff requested the defendant to remove the said [slaughter-house, or to cease using it for that purpose,] but he has not done so.¹

IV. [State special damage.]

[Demand of Judgment.]

No. 118.

iii. *For obstructing a way.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at the time hereafter mentioned was, possessed of [a house in the town of Coeymans, county of Albany.]

II. That he was accustomed to pass [with vehicles, or, on foot] along a certain way leading from his said house to [the highway.]²

¹ A request is held necessary against a mere continuer of a nuisance. (*Hubbard v. Russell*, 24 Barb., 407. But see contra, per DENIO, J., *Brown v. Cayuga and Susq. R. R.*, 12 N. Y. [2 Kern.], 492.

² The plaintiff is not required to plead or prove any facts giving him a title to the way. If the defendant has any right to interrupt him, that is matter of defense, and until he proves such right, he is a wrong doer. (See *St. John v. Moody*, 2 Lev., 148; 1 Vent., 274; *Winford v. Wollaston*, 3 Lev., 266.)

COMPLAINTS.

III. That on the day of, 18.., the defendant obstructed the said way, so that the plaintiff could not pass [with vehicles, *or*, on foot, *or*, in any manner] along the said way [and has ever since obstructed the same.]

IV. [*State special damage, if any.*]

[*Demand of Judgment.*]

No. 119.

iv. *For diverting a water course.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at the time hereafter mentioned was, possessed of a [saw-mill] situated on a [brook, *or*, creek] known as the, in the town of, county of

II. That the water of the said [brook] was accustomed to flow into the said mill.¹

III. That on the day of, 18.., the defendant diverted the water of the said [brook], so that less water ran into the plaintiff's mill.

IV. That by reason thereof the plaintiff has been unable to saw more than logs per day, whereas, before the said diversion of water, he was able to saw logs per day.

[*Demand of Judgment.*]

¹ This is sufficient, as against a wrong doer. (*Sands v. Trefuses*, Cro. Car., 575; *Anon.*, id., 500 See *Haight v. Price*, 21 N. Y., 245.)

COMPLAINTS.

Sec. 7. COMPLAINTS FOR WASTE.

No. 120.

v. *For waste by a lessee.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant hired from him the [house No. street, Albany,] for the term of¹

II. That the defendant occupied the same under such hiring.

III. That during the period of such occupation the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible.]

Wherefore, the plaintiff demands judgment for dollars damages. [*Treble damages.*]²

Sec. 8. COMPLAINTS FOR INJURIES TO THE PERSON.

No. 121.

i. *For assault and battery.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

That on the day of, 18.., at, the defendant assaulted and beat him.

Wherefore, the plaintiff demands judgment for dollars damages.

¹ As the defendant is estopped from denying the plaintiff's title, it need not be alleged. We are aware that, before the Code, the title must be pleaded in this action (*Carris v. Ingalls*, 12 Wend., 70), but there is no reason, under the Code, why this exceptional rule should be maintained. Of course, if the action is brought against a tenant, whose possession was not derived from the plaintiff, the latter must show his title.

² 3 R. S. (5th ed.) 621; [2 id. 334.]

COMPLAINTS.

No. 122.

ii. *The same, with special damage.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant assaulted and beat the plaintiff, until he became insensible.

II. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter,] and was compelled to pay dollars for medical attendance, and has been ever since disabled [from using his right arm.] [*Or otherwise state the damage, as the case may be.*]

[*Demand of Judgment.*]

No. 123.

iii. *For false imprisonment.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

That on the day of, 18.., at, the defendant imprisoned him for days, [or, hours.] [*State special damage, if any.*]

[*Demand of Judgment.*]

COMPLAINTS.

No. 124.

iv. *For injuries caused by negligence of the defendant in leaving a hatchway open.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant was the occupant of the [store No. 100 State street, Albany,] and had possession and control of the hatchway hereafter mentioned.

II. That on the said day the plaintiff was in the said [store, or building] by permission of the defendant, for the purpose of transacting business with him, [or, in the discharge of his duties as a tax collector for the city of, or otherwise show for what purpose, and by what right, the plaintiff was there.]

III. That the hatchway on the story of the said building was then, by the negligence of the defendant, left open, unprotected in any manner.

IV. That in consequence thereof the plaintiff fell through the said hatchway and was much injured; [state special damage, if any, as, and was kept to his bed and detained from business for days, was compelled to expend dollars for medical attendance and nursing, and has been made permanently lame.]

[Demand of Judgment.]

COMPLAINTS.

No. 125.

v. *For injuries caused by negligence on a railroad.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant was a common carrier of passengers, by railroad, between and.....

II. That on that day the plaintiff was a passenger in one of the carriages of the defendant, on the said road.

III. That while he was such passenger, at [or, near the station of, or, between the stations of and] a collision occurred on the said railroad, caused by the negligence of the defendant's servants, whereby the plaintiff was much injured, [having his leg broken, his head cut, &c., and state the special damage, if any, as] and is permanently disabled from carrying on his former business as a salesman.

[Demand of Judgment.]

COMPLAINTS.

No. 126.

vi. *The same, by an executor or administrator.*¹

SUPREME COURT.

JOHN SMITH, as executor, or, administrator of the will of James Smith,
against
 THE NEW YORK AND HARLEM RAIL-
 ROAD COMPANY.

COUNTY OF

The plaintiff complains, and alleges:

I. That on the day of, 18..., the defendant was a common carrier of passengers, by railroad, between and

II. That on that day, one James Smith was a passenger in one of the carriages of the defendant, on the said road.

III. That while he was such passenger, at [a collision occurred on the said railroad,] caused by the negligence of the defendant's servants, whereby the said James Smith was killed.

[*Remainder as in No. 6 or No. 7.*]

[*Demand of Judgment.*]

¹ It was held in the Superior Court, that a complaint of this kind must expressly allege that there is a widow, or next of kin, giving their names and alleging that they had sustained pecuniary injury. (*Safford v. Drew*, 3 Duer, 641.) But the doctrine of this case is entirely inconsistent with the later cases of *Chapman v. Rothwell*, Ellis, Bl., and E., 168; *Quin v. Moore*, 15 N. Y., 436; *Oldfield v. New York and Harlem Railroad*, 14 N. Y., 316; *Dickens v. New York Central Railroad*, 28 Barb., 41; *Keller v. New York Central Railroad*, 17 How., 102. The first of these cases expressly decides that no allegation of damage to the next of kin is necessary; and though the whole doctrine of *Safford v. Drew* is not overruled in terms, yet we think it is in effect, and that nominal damages, at least, may be recovered on the above complaint, with liberty to prove actual damage.

COMPLAINTS.

Sec. 9. COMPLAINTS FOR DEFAMATION.

No. 127.

i. *For libel; the words being libelous in themselves.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, the defendant published in a newspaper called the [or, in a letter addressed to A. B.] the following words, concerning the plaintiff:

[Set forth the words used.]

II. That the said publication was false.¹

[Demand of Judgment.]

No. 128.

ii. *For libel; the words not being libelous in themselves.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That the plaintiff [is, and] was, on and before the day of, 18..., a merchant doing business in the city of

II. That on the day of, 18 .., at, the defendant published in a newspaper called the, [or, in a letter addressed to A. B., or otherwise show how published,] the following words concerning the plaintiff:

["John Smith, of this city, has modestly retired to foreign lands. It is said that creditors to the amount of \$100,000 are anxiously seeking his address."]

III. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them.]

IV. That the said publication was false.¹

[Demand of Judgment.]

¹ Malice is implied. (*Hunt v. Bennett*, 19 N. Y., 176; *Root v. King*, 7 Cow., 620.)

COMPLAINTS.

No. 129.

iii. *For slander; the words being actionable in themselves.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant spoke, in the hearing of A. B., [*or, sundry persons,*] the following words concerning the plaintiff: ["He is a thief."]

II. That the said words were false.

[*Demand of Judgment.*]

No. 130.

iv. *For slander; the words not being actionable in themselves.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant said to one William Brown, concerning the plaintiff, ["He is a young man of remarkably easy conscience."]

II. That the plaintiff was then seeking employment as a clerk, and the defendant meant by the said words, that the plaintiff was not trustworthy as a clerk.

III. That the said words were false.

IV. That in consequence of the said words [the said Brown refused to employ the plaintiff as a clerk.]

[*Demand of Judgment.*]

COMPLAINTS.

No. 131.

v. *For malicious prosecution.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant obtained a warrant of arrest from, [a police justice of the said city, *or as the case may be,*] on a charge of, and the plaintiff was arrested thereon, and imprisoned for [days, *or,* hours, and gave bail in the sum of dollars to obtain his release.]

II. That in so doing, the defendant acted maliciously and without probable cause.

III. That on the day of, 18.., the said justice dismissed the complaint of the defendant, and acquitted the plaintiff; [*or,* the grand jury of the county of ignored the bill against the plaintiff, *or otherwise show a termination favorable to him.*]

[*Special damage.* IV. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or,* that in consequence of the said arrest the plaintiff lost his situation as clerk to one William Brown.]¹

[*Demand of Judgment.*]

¹ As a general rule, the names of persons who have refused to deal with the plaintiff must be stated (*Linden v. Graham*, 1 Duer, 672); but if it is in the nature of things impracticable for him to know them, he may prove general loss of business. (*Evans v. Harries*, 1 Hurl. & N., 251.) It is properly a question of evidence, which cannot be settled before the trial.

COMPLAINTS.

No. 132.

vi. *For slander of title.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., he was the [owner in fee simple] of [the house and lot, No. 100 State street, Albany, *or*, a farm in the town of, county of], bounded by land of A. B., C. D. and E. F.]

II. That on that day, at, the defendant spoke, in the presence of William Brown [and other persons,] the following words concerning the plaintiff and his said property: ["John Smith does not own that farm. He has sold it to me, and I have a good title to it."]

III. That the said words were false and malicious.¹

IV. That by reason of the said words, the said Brown, who was then about to purchase the said property from the plaintiff, refused to do so. [*Or otherwise show special damage.*]

[*Demand of Judgment.*]

¹ Malice is not presumed in this action.

COMPLAINTS.

TITLE VI

FOR SPECIFIC PROPERTY.

- SECTION 1. For land.
2. For chattels.

Sec. 1. COMPLAINTS FOR LAND.

No. 133.

i. *By the owner in fee for the possession.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That he is the owner in fee simple of the [house and lot No. 100 State street, Albany.]

II. That the defendant withholds the possession thereof from the plaintiff.

Wherefore, the plaintiff demands judgment :

1. For the possession of the said premises ;
2. For dollars damages for withholding the same.

No. 134.

ii. *By the owner in fee ; for the title and possession.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I and II. [*As in the preceding form.*]

Wherefore, the plaintiff demands judgment :

1. For the possession of the said premises ;

COMPLAINTS.

2. That he is entitled to the same, in fee simple absolute ;
3. For dollars damages for withholding the same.

No. 135.

iii. *By the tenant.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That one William Brown is the owner in fee simple of [a piece of land in the town of Bethlehem, county of Albany, bounded as follows :]

II. That on the day of, 18.., the said Brown let the said premises to the plaintiff for years from

III. That the defendant withholds the possession thereof from the plaintiff.

[Demand of Judgment.]

No. 136.

General form.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of, 18.., he was possessed of [the house and lot No. State street, Albany.]

II. That while so possessed, the defendant, on the day of, 18.., entered thereon, and withholds the possession thereof from the plaintiff.

[Demand of Judgment.]

COMPLAINTS.

No. 137.

Sec. 2. COMPLAINTS IN ACTIONS FOR CHATTELS.

i. *For chattels wrongfully taken.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., he owned [or, was possessed of one hundred barrels of flour.]¹

II. That on that day, at, the defendant took the same.

Wherefore, the plaintiff demands judgment:

1. For the possession of the said goods, or for dollars in case such possession cannot be had;

2. For dollars, damages for the detention thereof.

No. 138.

ii. *For chattels wrongfully detained.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., he owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods.]

II. That from that day until the commencement of this action the defendant has detained the same from the plaintiff.

III. That before the commencement of this action, to wit, on the day of, 18..., the plaintiff demanded the same from the defendant, but he refused to deliver them.²

¹ The value of the goods is immaterial for the purposes of a complaint of this nature. If alleged, the defendant cannot deny it, nor does his default admit it. Neither does it make the complaint more definite or certain.

² In this form of action a demand must be proved. (*Powers v. Bassford*, 19 How., 309; *Fuller v. Lewis*, 3 Abb., 384; see *Gurney v. Kenney*, 2 E. D. Smith, 132; *Barrett v. Warren*, 3 Hill, 351; *Storm v. Livingston* 6 Johns., 44.)

COMPLAINTS.

Wherefore, the plaintiff demands judgment:

1. For the possession of the said goods, or for dollars, in case such possession cannot be had ;
2. For dollars damages for the detention thereof

No. 139.

iii. *Against a fraudulent purchaser, and his transferee.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, the defendant, John Jones, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth dollars over all his liabilities.]

II. That the plaintiff was thereby induced to sell and deliver to the said John Jones [one hundred boxes of teas.]

III. That the said representations were false, and were then known by the said John Jones to be so. [Or, That at the time of making the said representations, the said John Jones was insolvent, and knew himself to be so.]

IV. That the said John Jones afterwards transferred the said goods to the defendant, William Jones.¹

Wherefore, the plaintiff demands judgment:

1. For the possession of the said goods, or for dollars, in case such possession cannot be had ;
2. For dollars damages for the detention thereof

¹ It need not be alleged that the transferee received the goods with notice, or without consideration. He must prove that he paid value, and acted in good faith.

COMPLAINTS.

TITLE VII

FOR SPECIAL RELIEF.

- SECTION 1. Concerning real property.
 2. Concerning personal property.
 3. Divorce.
 4. Concerning public office.

Sec. 1. COMPLAINTS RELATIVE TO REAL PROPERTY.

No. 140.

i. *For specific performance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., the defendant was seised in fee simple of certain real property described in the agreement hereto annexed.

II. That on the same day, the plaintiff and defendant entered into an agreement under their hands and seals, a copy of which is hereto annexed.

III. That on the day of, 18.., the plaintiff tendered dollars to the defendant, and demanded a conveyance of the said property.

IV. That on the day of, 18.., the plaintiff again demanded such conveyance.¹ [Or, That the defendant refused to convey the same to the plaintiff.]

V. That the defendant has not executed such conveyance.

¹ It is held, in this state, that a reasonable time must be given, after a first demand, to prepare a deed, and a second demand must be made. (*Lutweller v. Linnell*, 12 Barb., 512; *Connelly v. Pierce*, 7 Wend., 130; *Hackett v. Huson*, 3 Wend., 250; *Fuller v. Hubbard*, 6 Cow., 17.) But if the vendor, on the first demand, positively refuse to convey, no further demand is necessary. (*Carpenter v. Brown*, 6 Barb., 147; *Driggs v. Dwight*, 17 Wend., 74.)

COMPLAINTS.

VI. That the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant.

Wherefore, the plaintiff demands judgment :

1. That the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement* ;]
2. For dollars damages for withholding the same.

No. 141.

ii. *For rescission of a contract, on the ground of mistake.*¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges :

I. That on the day of 18.., the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at, contained [ten acres.]

II. That the plaintiff was thereby induced to purchase the same at the price of dollars, in the belief that the said representation was true, and signed an agreement, of which a copy is hereto annexed. But no deed of the same has been executed to him.

III. That on the day of, 18.., the plaintiff paid the defendant dollars, as part of such purchase money.

IV. That the said piece of ground contained in fact only [five acres.]

Wherefore, the plaintiff demands judgment :

1. For dollars, with interest from the day of, 18...;
2. That the said agreement of purchase be delivered up and canceled.

¹ The law on this subject is in an unsettled state. We have followed the decision of the court of appeals in *Belknap v. Sealey* (14 N. Y., 158), in preparing this form, but do not intend, of course, to introduce any new rules on the subject.

COMPLAINTS.

No. 142.

iii. *For foreclosure of real property.*

SUPREME COURT.

JOHN SMITH <i>against</i> JOHN JONES and CAROLINE his wife, JAMES JOHNSON and JOHN JOHN- SON.	}	COUNTY OF.....
---	---	----------------

The plaintiff complains, and alleges:

I. That on the day of 18.., the defendant, John Jones, executed to the plaintiff a bond, conditioned to pay him dollars, in year, with interest at [seven] per cent per annum, payable [half yearly.]

II. That for the purpose of securing the payment of the said bond, the said Jones, with Caroline his wife, executed to the plaintiff a mortgage of the same date, upon certain real property in the town of, in the county of....., described as follows: [*giving a description of the property as it should be described in the sheriff's deed.*]

III. That on the day of....., 18.., the said mortgage was recorded in the office of the clerk of the county of, in book of mortgages, page

IV. That on the day of, 18.., the said Jones and his wife conveyed the said real property, subject to the said mortgage, to the defendant, James Johnson, who thereupon covenanted with the said Jones, under his hand and seal, that the said bond and mortgage should be paid at maturity.

V. That no part of the principal or interest of the said bond and mortgage has been paid.¹

¹ The Revised Statutes (3 R. S., 5th ed., 272, [2 id., 191,]) required the complainant in chancery to state whether any, and if so, what proceedings had been had at law to collect payment on the bond, and if the statement of the complaint was proved untrue, it was dismissed. (*Lovett v. German Re-*

COMPLAINTS.

VI. That the defendant, John Johnson, has or claims some interest in, or lien upon, the said real property; but the same, whatever it may be, is subject to the lien of the said mortgage.¹

Wherefore, the plaintiff demands judgment:

1. That each of the defendants, and all persons claiming under any of them, subsequently to the commencement of this action, be foreclosed of all equity of redemption or other interest in the said real property;

2. That the same be sold and the proceeds applied to the payment of the amount due on the said bond and mortgage, with interest;

3. That if there be any deficiency, the defendants, John Jones and James Johnson, pay the same.

No. 143.

iv. *For redemption of real property.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., he executed to the defendant a mortgage upon certain real property in the town of, in the county of, described as follows: [*describing it*] to secure the payment of dollars, in year, with interest at [seven] per cent per annum, payable [half yearly.]

II. That on the day of, 18.., he tendered to the defendant dollars, being the principal of the said mortgage, with interest from the date thereof to that time, and

formed Church, 12 Barb., 83.) This is unnecessary under the Code, as whatever the plaintiff has done in the way of a former suit is matter of defense, and legal and equitable remedies are obtainable in one action. (Code, § 69.)

¹ This is sufficient. (*Drury v. Clark*, 16 How., 431.)

COMPLAINTS.

requested the defendant to acknowledge satisfaction of the same, but he refused to do so.

Wherefore, the plaintiff demands judgment:

1. That he be allowed to redeem the said mortgage, upon paying to the defendant the amount due thereon;
2. That upon such payment the defendant satisfy the said mortgage of record.

No. 144.

v. *For partition of real property.*¹

SUPREME COURT.

JOHN SMITH <i>against</i> WILLIAM SMITH, JAMES SMITH and JOHN JOHNSON.	}	COUNTY OF
---	---	-----------------

The plaintiff complains, and alleges:

I. That he and the defendants, William Smith and James Smith, are in possession, as tenants in common, of certain real property in the town of, in the county of, described as follows: [*describing it.*]

II. That he has an estate of inheritance therein, consisting of one undivided [third] part thereof, as tenant in common with the defendants, William Smith and James Smith, who have each a similar estate.

III. That the defendant, John Johnson, has a mortgage heretofore executed by the defendant, James Smith, upon his said interest, for the payment of dollars on the day of, 18.., with interest from that time.

¹ See 3 R. S., (5th ed.) 604; [2 id., 318.]

COMPLAINTS.

[IV. That the plaintiff owns no other land in this state in common with the said William and James.]¹

Wherefore, the plaintiff demands judgment for a partition of the said real property, according to the respective rights of the parties aforesaid; or if a partition cannot be had without material injury to those rights, then for a sale of the said premises, and a division of the proceeds between the parties, according to their rights.

[*Verification.*]²

No. 145.

vi. *For partition by a tenant in common, or joint tenant, against a co-tenant who has wasted the estate.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is a tenant in common [*or, joint tenant*] with the defendant of [*describe the property.*]

II. That [*each of them*] is entitled to an undivided [*half*] of the same.

III. That between the day of, 18.., and the day of, 18.., the defendant committed great waste upon the same, [*cutting down many valuable fruit trees; or otherwise specify acts of waste,*] without the consent of the plaintiff.

Wherefore, the plaintiff demands judgment:

1. For dollars damages.³

2. For a partition of the said premises in such manner as to compensate him for such damages.

¹ This allegation is *necessary* when an infant is made a party (Rule 77, Supreme Court), and it can do no harm in any other case, though not necessary.

² 2 R. S., 318, § 5.

³ The plaintiff can have this relief. (3 R. S. (5th ed.), 621; [2 id., 335].)

COMPLAINTS.

No. 146.

vii. *For the determination of claims to real property.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That at the time of his death one William Smith was seised in fee simple of certain real property in the town of, county of, bounded as follows:¹

II. That in his lifetime the said William Smith made and published his last will and testament, whereby he devised to the plaintiff all the said property.²

III. That on the day of, 18.., at, the said William Smith died.³

IV. That the said property is now, and has been for the three years last past, in the actual possession of the plaintiff [*or, is now, and has been for the years last past, in the actual possession of the plaintiff, and was, during the years immediately preceding that period, in the actual possession of the said deceased.*]

V. That the defendant unjustly claims an estate for life in the same.

Wherefore, the plaintiff demands judgment that the defendant be forever barred from all claim to any estate of inheritance or freehold in the said property.⁴

¹ See 3 R. S. (5th ed.), 599; [2 id., 312.]

² These allegations are mutually dependent. They may be varied according to the actual source of the plaintiff's title. (2 R. S., 313, § 2.)

³ This is all the relief to which the plaintiff is entitled. (Laws 1855, ch. 511, § 3.)

COMPLAINTS.

No. 147.

viii. *For vacating an assessment for local improvements.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is the owner in fee simple of [one undivided seventh part of four lots of land in the sixteenth ward of the city of New York,] bounded and described as follows: [*insert description of property*] [the other six-sevenths being owned in fee simple by the defendants, C. D., E. F., G. H., I. J., K. L. and M. N.]

II. That the defendants O. P. and Q. R. are the owners in fee of [two] lots adjoining the [four] above described lots, which said [two] lots are bounded, taken together, as follows: [*insert description.*]

III. That the [two] lots last above described, and the [two] or the other [four] lots which front on [26th] street, were sold in one parcel on the day of, 18.., by the mayor, aldermen and commonalty of the city of New York, to satisfy two alleged assessments for local improvements, one for the opening of [26th] street, from the [Hudson river] to the [Bloomingdale road,] and the other for setting curb and gutter in the [8th avenue] from [24th] street to [42d] street.

IV. That the other [two] of the first described lots, fronting on [25th] street, were sold in one parcel on the said day of, 18.., by the said mayor, aldermen and commonalty, to satisfy two alleged assessments for local improvements, one for opening [25th] street, and the other for setting the curb and gutter aforesaid.

V. That in the proceedings relative to all the said assessments, and in the proceedings to collect the same, both fraud and legal irregularity have been committed.

VI. That the following, among others, are the frauds and legal irregularities committed, in respect to the assessment for opening [26th] street:

COMPLAINTS.

1. That the land in the street to the middle thereof, fronting on the said lots, belonged to the same owner as the said [four] lots, which owner was wrongly stated to be [John Jones;]

2. That the benefit above the damage was assessed at dollars, for the said [four] lots with [two] adjoining lots, thus charging the owner with a large sum for taking his own property;

3. That the petition of the said mayor, aldermen and commonalty, and the order of the supreme court thereon made, appointing commissioners of estimate and assessment, appointed them for the opening of [26th] street from [Hudson river] to the [Fourth avenue.]

VII. That the following, among others, are the frauds and legal irregularities committed in respect to the proceedings to collect all the said assessments :

1. That notices were not left before the advertisement of sale, at the residence of the owners or with the tenants on the property ; which property was then occupied :

2. That the advertisement described the assessment for opening [26th] street, as confirmed on the day of, 18.., whereas, if it was ever confirmed, it was confirmed on the day of, 18..

VIII. That upon the said sales the property was bid in by the said mayor, aldermen and commonalty, who shortly afterwards assigned the said bid for the lots on [26th] street to [John Jackson,] and for the lots on [25th] street to [James Jackson,] but that no lease has yet been executed, pursuant to the said sale.

Wherefore, the plaintiff demands judgment :

1. That the said mayor, aldermen and commonalty, be restrained by injunction from executing or delivering any lease pursuant to the sales above mentioned ;

2. That the said assessments and all proceedings to collect the same, be declared void and set aside.

COMPLAINTS.

No. 148.

ix. *For forfeiture and eviction, on account of waste, by a reversioner.*¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That at the time of his death one William Smith was seised in fee simple of [*describe the property.*]

II. That in his lifetime the said William Smith made and published his last will and testament, whereby he devised the said land to the defendant for the term of, and afterwards to the plaintiff

III. That on the day of, 18.., at, the said William Smith died.

IV. That the defendant entered into possession of the same, under the said will.

V. That on the day of, 18.., the defendant committed great waste on the said land, [cutting down many valuable fruit trees, *or otherwise specify the acts of waste.*]

VI. That the injury thereby done to the said property is [more than] equal to the value of the defendant's unexpired term.

[*Or, VI. That such waste was committed in malice.*]

Wherefore, the plaintiff demands judgment:

1. That the estate of the defendant in the said property be forfeited;

2. That he be evicted therefrom;

[3. For dollars, damages.]

¹ Code, § 452.

COMPLAINTS.

No. 149.

x. *For an injunction restraining waste.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is the owner in fee simple of [*describe the property.*]

II. That the defendant is in possession of the same, under a lease from the plaintiff.

III. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more, for the purpose of sale,] without the consent of the plaintiff.

Wherefore, the plaintiff demands judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary damages might also be demanded.*]

No. 150

xi. *For abatement of a nuisance.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at all the times hereafter mentioned was, the owner in fee simple of [the house and lot No. 100 State street, Albany.]¹

II. That the defendant is, and at all the said times was, the owner in fee simple of [the lot No. 98 State street, Albany.]¹

III. That on the day of 18.., the defendant erected upon his said lot a slaughter-house, and still maintains

¹ An action to *abate* a nuisance can be maintained only by the owner in fee of the premises injured, against the owner in fee of the premises on which the nuisance exists. (*Ellsworth v. Putnam*, 16 Barb., 568.)

COMPLAINTS.

the same; and from that day until the present time has continually caused cattle to be brought and killed there, [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff.]

IV. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same.]

Wherefore, the plaintiff demands judgment, that the said nuisance be abated.¹

No. 151.

xii. *For an injunction against the diversion of a water-course.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

[As in No. 118.]

Wherefore, the plaintiff demands judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

Sec. 2. COMPLAINTS RELATIVE TO PERSONAL PROPERTY.

No. 152.

i. *For restoration of personal property, threatened with destruction, and for an injunction.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That he is, and at all times hereafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter,] and of which no duplicate exists. [*Or state*

¹ See note on previous page.

COMPLAINTS.

any facts showing that the property is of a kind that cannot be replaced by money.]"

II. That on the day of, 18..., he deposited the same for safe keeping with the defendant.

III. That on the day of, 18..., he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.

IV. That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

V. That no pecuniary damages would be an adequate compensation to the plaintiff for the loss of the said [painting.]"

Wherefore, the plaintiff demands judgment:

1. That the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting.]"
2. That he return the same to the plaintiff.

No. 153.

ii. *Creditor's action on a judgment of a court of record.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18..., at, judgment was [duly]¹ rendered in the court, in his favor,

¹ It is held in England, that a court of equity may interfere in any case where the recovery of specific chattels is sought, and the defendant threatens to dispose of or injure them. (*Wood v. Rowcliffe*, 3 Hare, 309; see 2 Giffard, 64.)

But it may be doubted whether there is sufficient authority in this state for granting the relief sought in this complaint, unless the injury is shown to be irreparable. (See *Jerome v. Ross*, 7 John. Ch., 333.) It is not intended to affect this question by the above form. (See *Hunt v. Mootry*, 10 How., 479.)

² "Duly" may be omitted, when the court is one of general jurisdiction. Otherwise, see Code, § 161.

COMPLAINTS.

against the defendants John and William Jones, for dollars.

II. That on the day of, 18.., an execution was issued upon the said judgment against the property of the said John and William Jones, to the sheriff of the county of, in which they then resided.

III. That the said execution has been returned by the said sheriff, wholly unsatisfied.

IV. That after the contracting of the debt on which the aforesaid judgment was recovered, the said John and William Jones assigned all their property to one John Robinson, in trust for the payment of their debts; [*or, made an assignment of which a copy is hereto annexed.*]

V. That the said Robinson accepted the said trust, and has collected a large sum of money and other property from the assets of his assignors, amounting in all to the value of over dollars.

VI. That the said assignment was made with intent to delay and defraud the creditors of the said John and William Jones.

Wherefore, the plaintiff demands judgment:

1. That the said assignment is fraudulent and void as against the plaintiff;
2. That the said Robinson account, under the direction of the court, for all the property received by him as aforesaid;
3. That the defendants be restrained by injunction from interfering with any of the said property, or its proceeds, except under the direction of the court;
4. That the plaintiff's judgment be satisfied out of the same.

COMPLAINTS.

No. 154.

iii. *Creditor's action on a justice's judgment.*¹

[*As in No. 153 to the end of ART. I.*]

II. That the said judgment included not more than dollars costs.

III. That on the day of, 18.., a transcript of the same was filed and docketed in the office of the clerk of the county of [*if the judgment debtors resided in another county, add: and on a transcript of the same was filed and docketed in the office of the clerk of the county of,*] in which the defendants, John and William Jones, then resided.

IV. [*To the end; as in No. 153, from ART. II to the end.*]

No. 155.

iv. *Against the trustees of a dissolved corporation.*²

[TITLE.]

[COUNTY.]

The plaintiff complains, on behalf of himself and all other creditors of the company who may come in and contribute to the expenses of this action, and alleges:

I. That the company was duly incorporated on the day of, 18.., under the "act relative to incorporations for manufacturing purposes," passed March 22d, 1811, and the acts amending the same; and thereafter carried on business at the town [*or, city*] of

II. [*State a cause of action against the company.*]

III. That on the day of, 18.., the trustees of the said company passed a resolution, of which a copy is hereto annexed, pursuant to an act entitled "An act to facilitate the

¹ See *Crippen v. Hudson*, 13 N. Y. [3 Kern.], 161.

² See the act of 1852, referred to.

COMPLAINTS.

dissolution of manufacturing corporations in the county of Herkimer, and to secure the payment of their debts without preference," passed April 16, 1852.

IV. That the defendants were the trustees of the said company at the time of the passage of the said resolution.

V. That the defendants have received a large amount of money and other property belonging to the said company, but have refused to pay the said claim of the plaintiff.

Wherefore, the plaintiff demands judgment:

1. That the defendants account, under the direction of the court, for the property received by them as aforesaid;
2. For the payment to him of dollars, with interest from the day of, 18.., out of the funds in possession of the defendants, or which they may collect;
3. That the defendants proceed, without delay, to discharge the trusts devolved upon them in the premises.

No. 156.

v. *Interpleader*.¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That before the date of the claims hereafter mentioned, one Benjamin Brown deposited with the plaintiff [*describe the property,*] for [safe keeping.]

II. That the defendant, John Jones, claims the same [under an alleged assignment thereof to him from the said Brown.]

III. That the defendant, John Johnson, also claims the same [under an order of the said Brown, transferring the same to him.]

¹ ORDER OF INTERPLEADER.—Under § 122 of the Code, an order to interplead may be obtained by a defendant in an action actually commenced, for which purpose the following forms may be used. The case supposed is that of a corporation, sued for a transfer of stock and payment of dividends.

COMPLAINTS.

IV. That the plaintiff is ignorant of the respective rights of the defendants.

No. 157.

i. *Notice of motion for order to interplead.*

[TITLE.]

Please take notice, that upon the annexed affidavit, and on the complaint herein, the defendant will apply to this court, at a special term, to be held at the, in the of, on the day of, 18.., at .. o'clock in the noon, for an order to substitute in his place, as defendant in this action, the sheriff of the county of, and to discharge this defendant from liability, either to the said plaintiff or the said sheriff, concerning the property mentioned in the complaint, upon transferring the same to such person as the court may direct, or for such other relief as to the court may seem just.

A. B.,

Defendant's Attorney.

[Date.]

To C. D., *Plaintiff's Attorney*;

To THE SHERIFF OF

No. 158.

ii. *Affidavit on motion.*

[TITLE.]

COUNTY OF: John Jones, of, being duly sworn, says as follows:

1. I am the treasurer of the defendant;
2. The complaint herein was served on the day of, 18..,
3. The defendant has not yet answered the same;
4. On the day of, 18.., the sheriff of the county of served upon me, as treasurer aforesaid, a copy of a warrant of attachment granted in an action in the supreme court, in favor of Benjamin Brown as plaintiff against Daniel Down as defendant, a copy of which is annexed, marked A; and also served a notice in writing, claiming delivery of the property mentioned in the complaint to him, by virtue of the said attachment; a copy of which notice is annexed, marked B;

COMPLAINTS.

V. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the court shall direct.

5. The said sheriff claims the said property, under the said attachment, as the property of the said Down, in satisfaction of any judgment to be obtained in the said action ;

6. On the service of the said warrant and notice, I delivered to the said sheriff, at his request, a certificate, of which a copy is annexed, marked C ;

7. The claim above mentioned is made without collusion between the defendant and the claimants ;

8. The defendant is ready and willing to deliver the said property to such person as the court may direct, upon being discharged from liability to either claimant ;

9. The fifth allegation herein, and no other, is made upon information and belief.

JOHN JONES.

Sworn before me, the day }
of, 18...., }

G. H.,

Commissioner of Deeds.

[*Annex Schedules, A, B and C.*]

No. 159.

iii. *Order of interpleader.*

SUPREME COURT.

JOHN SMITH <i>against</i> THE COMPANY.	}	At a special term, held at the, in the of, on the .. day of, 18.. PRESENT:, <i>Justice.</i>
--	---	---

On reading and filing notice of motion, with the affidavit of John Jones, dated the day of, 18.., and schedules A, B and C, therein referred to ; and on motion of A. B., counsel for defendant, after hearing C. D., counsel for plaintiff, and G. H., counsel for the sheriff of county ;

ORDERED : 1. That the defendant, upon the surrender to it of the certificate for shares of its capital stock, issued to Daniel Down, on the day of, 18.., numbered 286, transfer the same number of shares to [name of receiver ;]

COMPLAINTS.

VI. That this action is not brought by collusion with either of the defendants.

Wherefore, the plaintiff demands judgment:

1. That the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

2. That they be required to interplead together concerning their claims to the said property;

[3. That some person be authorized to receive the said property pending such litigation;]

4. That upon delivering the same to such [person,] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

[*Verification.*]

2. That the defendant pay to the said [receiver] dollars, being the dividends due on the said stock, deducting dollars for the defendant's costs in this action;

3. That E. F., the sheriff of the county of, be substituted as defendant, in the place of the company;

4. That on transfer and payment as aforesaid, the said company be discharged from all liability concerning the property mentioned in the complaint, as well to the said sheriff as to the plaintiff;

5. That the said [receiver] hold the said stock and dividends, and collect and hold future dividends thereon, in trust, subject to the further order or judgment of this court;

6. That within twenty days after entry of this order, the plaintiff serve a copy of his complaint, amended as he may see fit, upon the defendant substituted as aforesaid;

7. That if such defendant shall not, within twenty days after such service, answer the said complaint, the said stock shall be transferred and the said dividends paid to the plaintiff.

COMPLAINTS.

No. 160.

vi. *For a dissolution of partnership.*

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, he entered into partnership with the defendant [as merchants, or, under an agreement, of which a copy is hereto annexed.]

II. That on the day of, 18.., the defendant took exclusive possession of the partnership books and stock, and prevented the plaintiff from having access to the same. [*Or state any other facts constituting a breach of the agreement, avoiding legal conclusions.*]

Wherefore, the plaintiff demands judgment:

1. That the said partnership be dissolved;
2. That a receiver of the property thereof be appointed, with the usual powers;
3. That the defendant be restrained, by injunction, from interfering with the said property;
4. That the same be applied first to the payment of the partnership debts, and the remainder be divided between the parties according to their respective rights.

Sec. 3. DIVORCE.

No. 161.

i. *For divorce from the bonds of matrimony.*¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, [in this state,] she was married to the defendant.

II. That the plaintiff was, at the time of the several acts of adultery hereafter mentioned, and at the commencement of this action, an inhabitant of this state.

¹ See 3 R. S. (5th ed.), 235; [2 id., 144.]

COMPLAINTS.

[*Or, if the marriage did not take place in this state:* II. That the plaintiff and defendant were both, at the time of the several acts of adultery hereafter mentioned, inhabitants¹ of this state.

Or, II. That the acts of adultery hereafter mentioned were committed in this state, and the plaintiff is now an inhabitant² thereof.]

III. That on [*or, on or about*] the day of, 18.., at, [*and at other times and places since, which the plaintiff is unable more particularly to state,*] the defendant committed adultery with one A. B.

[*The following articles may be inserted in the proper cases. The facts stated in art. IV must be shown by affidavit if not inserted here.*³]

IV. That such adultery was committed without the consent, connivance, privity, or procurement of the plaintiff; that five years have not elapsed since the plaintiff discovered the fact of such adultery, [*or, that five years have not elapsed since the commencement of such adulterous intercourse was discovered by the plaintiff,*] and that the plaintiff has not [*voluntarily*] cohabited with the defendant since such discovery.

V. That the issue of the said marriage are children, named, aged years;, aged years; and, aged years.

Wherefore, the plaintiff demands judgment:

1. For a divorce from the bonds of matrimony;
- [2. That the custody of the said children be awarded to her,
3. That a reasonable provision for her and their support be made out of the property of the defendant.]

¹ The expressions "actual inhabitant," "actual resident" and "inhabitant," are used in the articles of the Revised Statutes, relating to divorce. The single word "inhabitant" probably expresses all that is meant by any of these expressions.

² (See rule 86, Supreme Court.) These facts are no part of the cause of action, though necessary to be shown.

COMPLAINTS.

No. 162.

ii. *For a divorce from bed and board.*¹

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18.., at, [in this state,] she was married to the defendant.

II. That she was, at the commencement of this action, an inhabitant of this state.

[*Or if the marriage did not take place in this state:* II. That the plaintiff and defendant are both inhabitants of this state:

Or, II. That the plaintiff and defendant have both become since, and remained for one year, inhabitants of this state, and the plaintiff is now an inhabitant thereof.]

III. That the defendant has cruelly and inhumanly treated the plaintiff, [*or, has so treated the plaintiff as to render it unsafe and improper for her to live with him; or, has abandoned and neglected to provide for her.*]

IV. That the nature and circumstances of the said misconduct are as follows [*specifying acts, times and places with reasonable certainty.*]

V. [*As in No. 161, if in accordance with the facts.*]

Wherefore, the plaintiff demands judgment:

1. For a divorce from the bed and board of the defendant;
- [2. That the custody of the said children be awarded to her;
3. That a reasonable provision be made for her and their support out of the property of the defendant.]

¹ See 3 R. S. (5th ed.), 237 [;2 id., 146.]

COMPLAINTS.

Sec. 4. COMPLAINTS FOR PUBLIC OFFICE.

No. 163.

i. *For an elective office.*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW
YORK and JOHN SMITH
against
JOHN JONES.

COUNTY OF

The plaintiffs complain, and allege:

I. That on the day of November, 18.., an election was duly held in the judicial district of this state, for the office of justice of the supreme court, for the term of eight years from the first day of January, 18...

II. That at the said election, the above named John Smith received the greatest number of legal votes for the said office.

III. That on the day of, 18.., the defendant usurped the said office, and has ever since withheld the same from the said John Smith.

Wherefore, the plaintiffs demand judgment:

1. That the defendant is not entitled to the said office, and that he be ousted therefrom;

2. That the said John Smith is entitled to, and be put in possession of the same.

COMPLAINTS.

No. 164.

ii. *For an office not elective.*

SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK AND N. C. P. <i>against</i> A. V. S.	}	CITY AND COUNTY OF NEW YORK.
---	---	---------------------------------

The plaintiffs complain, and allege:

I. That on the [thirtieth day of December, 1859,] the defendant was appointed chamberlain of the city of New York, by the mayor of the said city, with the advice and consent of the board of aldermen of the said city, and immediately thereafter entered upon the duties of the said office, and continued therein until his removal as hereinafter stated.

II. That [in May, 1860,] the said defendant was duly removed from the said office, by the mayor of the said city, by and with the consent of the board of aldermen of the said city.

III. That immediately after the removal of the said A. V. S. as aforesaid, the said N. C. P. was duly appointed chamberlain of the said city by the mayor thereof, with the advice and consent of the board of aldermen of the said city, to fill the vacancy made by the removal of the said defendant as aforesaid.

IV. That the said N. C. P. thereupon accepted the said office, and in the form and within the time required by law and the ordinances of the said city, took and subscribed before the mayor of the said city, and filed in his office, the oath of office of the said N. C. P. as such chamberlain, and also executed and filed in the office of the comptroller of the said city, an official bond, with sufficient sureties, approved by the said comptroller, in the amount prescribed by the ordinances of the said city.

V. That the said N. C. P., after the filing of such official oath and bond, demanded of the said defendant the possession of the said office, which the said defendant refused, and he still continues to usurp, hold and exercise the said office, to the exclusion of the said N. C. P.

COMPLAINTS.

Wherefore, the plaintiffs demand judgment:

1. That the said defendant is not entitled to the said office, and that he be ousted and excluded therefrom;

2. That the said N. C. P. is entitled to the said office, and that he be admitted into the same, and to all the rights and emoluments thereof.

COMPLAINTS.

TITLE VIII.

FOR ORDINARY AND SPECIAL RELIEF UNITED.

No. 165.

Complaint for ordinary judgment against the maker and indorser of a note, and to reach collateral securities lodged with the indorser.

[TITLE.]

[COUNTY.]

The plaintiff complains, and alleges:

I. That on the day of, 18., at, the defendant John Jones, for the purpose of inducing the plaintiff to sell him certain goods, agreed to give him, in payment therefor, the defendant's promissory note, indorsed by one William Brown; and represented to the plaintiff that the said Brown would be adequately indemnified by collateral security, for his indorsement.

II. That the plaintiff was thereby induced to sell and deliver to the said Jones, certain goods of the value of dollars.

III. That on the day of, 18., at, in consideration thereof, the said Jones, by his promissory note, promised to pay to [the order of the said Brown] dollars, months [*or*, days] after date.

IV. That the said Brown indorsed the same to the plaintiff.

V. That on the day of, 18., the same was presented to the said Jones for payment, but was not paid.

VI. That the said Brown had notice thereof.

VII. That the same has not yet been paid.

VIII. That the said Jones, when he procured the said indorsement from the said Brown, lodged with him [six promissory notes for the aggregate sum of dollars, made by one John Johnson, and indorsed by the said Jones,] as security for such indorsement.

COMPLAINTS.

IX. That the said Jones is endeavoring to withdraw the said [notes] from the said Brown, in order to prevent their application to the said indorsement.

X. That the plaintiff has requested the said Brown to apply the said [notes] to the payment of the plaintiff's said claim, but he refuses to do so.

Wherefore, the plaintiff demands judgment

1. For dollars, with interest from the day of
....., 18..;

2. That the [notes] placed in the hands of the said Brown as security, be applied to the payment of the said sum ;

3. That the defendants be restrained by injunction from disposing of the said [notes] to any person other than the plaintiff.

No. 166.

For damages and an injunction, in an action for nuisance.

[As in No. 115, except the demand of judgment, for which substitute:]

Wherefore, the plaintiff demands judgment:

1. That the defendant be restrained by injunction from using the said building as a slaughter-house, or permitting it to be so used;

2. For dollars damages.

DEMURRERS.

CHAPTER II.

DEMURRERS TO COMPLAINT.

No. 167.

i. *To the whole complaint.*

[TITLE.]

The defendant demurs [*or, the defendants, naming them, if only a part of them join, demur*] to the complaint upon the ground that as it appears, upon the face thereof, this court has not jurisdiction of the person of this defendant,

..... *or,*
this court has not jurisdiction of the subject of this action,

..... *or,*
the plaintiff has not legal capacity to sue, [*being an infant and no guardian having been appointed for him,*]

..... *or,*
there is another action pending between the same parties for the same cause of action,

..... *or,*
there is a defect of parties, plaintiff [*or, defendant*] in the omission of [*naming him,*]

..... *or,*
several causes of action have been improperly joined, one being a cause of action [*stating it,*] and another being [*stating it, so as to point out the incompatibility,*]

..... *or,*
the complaint does not state facts sufficient to constitute a cause of action.

[Date.]

C. D.,
Defendant's Attorney.

DEMURRERS.

No. 168.

ii. *To some of the alleged causes of action stated in the complaint.*

[TITLE.]

The defendant demurs [*or, the defendants, naming them, if only a part of them join, demur*] to the first [*or other*] claim of the complaint, upon the ground, &c.

ANSWERS.

CHAPTER III.

ANSWERS.

- Title 1. GENERAL FORM.
 2. DENIAL.
 3. AVOIDANCE.
 4. COUNTER-CLAIM.

TITLE I

GENERAL FORM.

No. 169.

General form of answer ; containing several defenses.

SUPREME COURT.

JOHN SMITH <i>against</i> JOHN JONES.	}	Answer.
---	---	---------

The defendant answers to the complaint:

First: For a first defense:

- I
- II
- III

Second: For a second defense:

- I
- II
- III

C. D.,
Defendant's Attorney.

[ALBANY, January 21, 1861.]

 ANSWERS.

TITLE II.

DENIAL.

- SECTION 1. General denial.
2. Specific denial.

Sec. 1. GENERAL DENIAL.

No. 170.

i. *Positive denial.*

[TITLE.]

The defendant answers [*or, the defendants answer, or if only part of the defendants join, the defendants, John Jones and William Brown answer*] to the complaint:

That no allegation thereof is true.¹

No. 171.

ii. *Denial of knowledge, &c.*

[TITLE.]

The defendant answers to the complaint:

That he has no knowledge or information sufficient to form a belief whether any one allegation thereof is true. [*Or where there are several defendants (and if only part of them join, name them:)* The defendants answer to the complaint, each for himself, that he has no knowledge, &c.]

¹ The form of denial at present in use under the Code is objectionable. The defendant may "deny" what he nevertheless believes to be true, and swear that the answer is true, *i. e.*, that it is true that he denies the charges of the complaint. Of course this is a quibble, but the law should leave no room for quibbles.

ANSWERS.

Sec. 2. SPECIFIC DENIAL.

No. 172.

i. *Denial by articles.*¹

[TITLE.]

The defendant answers to the complaint:

That no allegation contained in the [second and fourth] articles thereof is true.

No. 173.

ii. *Denial of loan (see No. 26.)*²

[TITLE.]

The defendant answers to the complaint:

That the plaintiff did not lend him the money mentioned in the complaint nor any part thereof.

No. 174

iii. *Denial of receipt of money (see No. 27.)*²

[TITLE.]

The defendant answers to the complaint:

That he has not received the money mentioned in the complaint, nor any part thereof.

¹ This form can be used when each article contains, as it should, but a single allegation.

² Complaints Nos. 26 and 27 would be as well, if not better, answered by a denial of their first articles, as in No. 172.

ANSWERS.

No. 175.

iv. *Denial of demand (see No. 28.)*

[TITLE.]

The defendant answers to the complaint :

That the plaintiff did not demand the proceeds of the goods therein mentioned, before the commencement of this action.

No. 176.

v. *Denial of request by defendant (see No. 30.)*

[TITLE.]

The defendant answers to the complaint :

I. That he never requested the plaintiff to pay any money to James Brown.

[II. That he never promised to pay any money to the plaintiff on account of any money paid to the said Brown.]

No. 177.

vi. *Denial of note (see No. 56.)*

[TITLE.]

The defendant answers to the complaint :

That the note mentioned therein is not his note.

No. 178.

vii. *Denial of indorsement (see Nos. 59 to 62.)*

[TITLE.]

The defendant answers to the complaint :

That he did not indorse the note mentioned therein.

ANSWERS.

No. 179.

viii. *Denial of notice of dishonor (see No. 59.)*

[TITLE.]

The defendant answers to the complaint:

That notice of the dishonor of the note [or, bill of exchange] mentioned in the complaint, was not given to him.

No. 180.

ix. *Denial of acceptance of bill of exchange (see Nos. 64 to 67.)*

[TITLE.]

The defendant answers to the complaint:

That he did not accept the bill mentioned therein.

No. 181.

x. *Denial of presentment (see Nos. 68 to 71.)*

[TITLE.]

The defendant answers to the complaint:

That the bill mentioned therein was never presented to him [or, to William Brown, &c.]

ANSWERS.

TITLE III.

AVOIDANCE.

SECTION 1. Not to the merits.

2. To the merits, showing the contract to be void.
3. To the merits, showing that the cause of action has not yet accrued.
4. To the merits, discharging the contract.
5. Justification of wrongs.
6. Several defenses.

Sec. 1. NOT TO THE MERITS.

No. 182.

i. *Want of jurisdiction.*

[TITLE.]

The defendant answers to the complaint:

That he was at the commencement of this action, and is now, consul of the King of Italy for the city of, duly accredited to the President of the United States, and by him received and acknowledged as such.

No. 183.

ii. *Infancy of plaintiff.*

[TITLE.]

The defendant answers to the complaint:

That the plaintiff is not of the age of twenty-one years.

[Or, That at the commencement of this action, the plaintiff was not of the age of twenty-one years.]

ANSWERS.

No. 184.

iii. *Marriage of plaintiff.*

[TITLE.]

The defendant answers to the complaint:

I. That the plaintiff was at the commencement of this action, and still is, the wife of one A. B.¹

II. That this action does not concern her separate property.

No. 185.

iv. *Marriage of defendant, commencing after the contract and before the action.*²

[TITLE.]

The defendant answers to the complaint:

I. That she was at the commencement of this action, and still is, the wife of A. B., who now resides at

II. That this action does not concern her separate property.

¹ It is usual to add, "who is still living at" But if the plaintiff is a *wife*, her husband must be living; and his residence is presumably better known to her than to the defendant.

² If the defendant were married at the time of the contract, the fact would be a plea "to the merits." See *post*.

ANSWERS.

No. 186.

v. *Non-joinder of a necessary party plaintiff.*

[TITLE.]

The defendant answers to the complaint:

I. That the [goods mentioned in the complaint were sold by] the plaintiff and one William Brown as partners, under the firm name of Smith & Company.]

II. That the said Brown is still living.

No. 187.

vi. *Non-joinder of necessary defendant.*

[TITLE.]

The defendant answers to the complaint:

I. That the goods mentioned in the complaint, were sold to this defendant and one William Brown, jointly, [as partners under the firm of Jones & Company.]

II. That the said Brown is still living at, in this state.

No. 188.

vii. *Denial of plaintiff's incorporation.*

[TITLE.]

The defendant answers to the complaint:

That there was not at the commencement of this action, nor is there now, any such corporation as the [Barren Mining Company,] named as plaintiff in this action.

ANSWERS.

No. 189.

viii. *Pendency of another action.*

[TITLE.]

The defendant answers to the complaint:

That there was at the commencement of this action, and still is, another action pending in the court of [*specifying a court of this state*] between the same parties, and for the same cause of action, as in the complaint herein.

Sec. 2. TO THE MERITS, SHOWING THE CONTRACT TO BE VOID.

No. 190.

i. *Infancy of defendant.*

[TITLE.]

The defendant answers to the complaint:

That at the time of making the agreement [*or, of the delivery of the goods*] mentioned therein, he was not of the age of twenty-one years.

No. 191.

ii. *Marriage of defendant.*

[TITLE.]

[*As in the preceding form, to the word "therein," and continue*]
she was the wife of A. B.]

ANSWERS.

No. 192.

iii. *Want of consideration.*¹

[TITLE.]

The defendant answers to the complaint:

That he received no consideration for the note [or, promise] mentioned therein. [*If mistake, fraud, or other attendant facts are to be proved, they should be stated.*]

No. 193.

iv. *Mistake.*

[TITLE.]

The defendant answers to the complaint:

I. That when he signed the note therein mentioned, he supposed it to be for [one hundred] dollars, but by mistake it was drawn for [two hundred] dollars.

II. That he received no consideration for more than [one hundred] dollars of the amount of the said note.

No. 194.

v. *Fraud.*

[TITLE.]

The defendant answers to the complaint:

I. That the plaintiff induced him to make the note mentioned in the complaint, by representing that he was authorized by one

¹ This answer should be sparingly used, though it is necessarily inserted here. Nothing can be proved under it, except the bare fact of no consideration whatever having been given.

ANSWERS.

A. B., to whom the defendant owed the amount of the same, to take a note to himself in satisfaction of such debt. [*Or otherwise state the fraudulent misrepresentation, &c.*]

II. That the said representation was false.

III. That the defendant received no consideration for the said note.

No. 195.

vi. *Duress.*

[TITLE.]

The defendant answers to the complaint:

I. That the [bond] mentioned therein was extorted from him by threats of personal violence, [*or, of public charges against his character,*] and was executed by him under fear of the same.

II. That the said bond was executed by him without any consideration therefor.

No. 196.

vii. *Statute of frauds (see No. 86.)*

[TITLE.]

The defendant answers to the complaint:

I. That no note or memorandum in writing was ever made of any such contract as is alleged in the complaint.

[*Or, That the defendant did not subscribe any written note or memorandum of any such contract as is alleged in the complaint.*]

II. That he did not receive any part of the goods mentioned in the complaint.

III. That he did not pay any part of the purchase money.

ANSWERS.

No. 197.

viii. *Usury (as a defense upon a note.)*

[TITLE.]

The defendant answers to the complaint:

I. That the note mentioned therein was given to the plaintiff in pursuance of a mutual agreement between the plaintiff and defendant, that the plaintiff should lend the defendant money at the rate of [ten] per centum per annum.

II. That the defendant received from the plaintiff dollars only, as consideration for the said note; the plaintiff retaining dollars, as interest thereon.

No. 198.

ix. *Articles furnished defendant's wife not necessary (to No. 35.)*

[TITLE.]

The defendant answers to the complaint:

I. That the articles mentioned therein were not furnished to his wife with his [knowledge or] consent.

II. That the same were not necessary for her.

[Or, III. That he always furnished her with such things as were necessary for her.]

ANSWERS.

No. 199.

x. *Invalidity of an award (to No. 52.)*¹

[TITLE.]

The defendant answers to the complaint:

I. That by the terms of the agreement referred to in the complaint, the arbitrators were to hear the evidence and arguments of both parties at meetings called upon notice to both; and were not to listen to anything that might be said by either party on the subject except at such meetings.

II. That the arbitrators held one meeting without giving notice to the defendant, at which they received evidence on behalf of the plaintiff, and also entered into private conversation, at other times, with the plaintiff in regard to the said award.

[Judgment may be demanded, setting aside the award, if desired.]

No. 200.

xi. *Invalidity of a foreign judgment (to No. 53.)*

[TITLE.]

The defendant answers to the complaint:

I. That no process was served upon him in the action mentioned in the complaint.

II. That he never appeared in person or by attorney in the said action.²

¹ At common law, this defense could be proved under a plea of "no award." (*Dresser v. Stansfield*, 14 M. & W., 822; *Fisher v. Pimbley*, 11 East, 188.) But the Code does not contemplate such a method of pleading.

² These facts are a sufficient defense. (*Long v. Long*, 1 Hill, 597; *Shumway v. Stillman*, 6 Wend., 447; *Starbuck v. Murray*, 5 Wend., 148.)

ANSWERS.

Sec. 3. TO THE MERITS, SHOWING THAT NO CAUSE OF ACTION HAS
ACCRUED.

No. 201.

i. *Credit unexpired (to Nos. 32 to 34.)*

[TITLE.]

The defendant answers to the complaint:

I. That the goods mentioned therein were sold to him upon a credit of [months] from the day of, 18..

II. That such period had not elapsed before the commencement of this action.

Sec. 4. TO THE MERITS, IN DISCHARGE OF THE CONTRACT.

No. 202.

i. *Payment.*

[TITLE.]

The defendant answers to the complaint:

That on the day of, 18.., at, he paid to the plaintiff the money demanded in the complaint: [or, dollars on account of the demand in the complaint.]

No. 203.

ii. *Tender.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at....., before the commencement of this action, he tendered to the

ANSWERS.

plaintiff dollars, in payment of the [note] mentioned in the complaint.

II. That the defendant has always been and still is ready and willing to pay the same.

No. 204.

iii. *Accord and satisfaction.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at, he delivered to the plaintiff the promissory note of A. B., for dollars.

II. That the plaintiff accepted the same in full satisfaction of the claim [*or*, demand] set up in the complaint.

No. 205.

iv. *Release.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at, the plaintiff, by deed, released the defendant from the claim set up in the complaint.

ANSWERS.

No. 206.

v. *Discharge in insolvency.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at, A. B., [judge of the county court of county,] duly made and granted to the defendant a discharge from his debts, as an insolvent, of which a copy is hereto annexed.

II. That the debt demanded in the complaint was contracted before the day of, 18.., on which day the defendant made an assignment of all his property under the direction of the said A. B.

III. That the contract alleged in the complaint was made [*or*, was to be executed] in this state.

[*Or*, That the plaintiff resided in this state at the time of the first publication of the notice of application for the defendant's discharge, to wit, on the day of, 18...]

[*Or*, That the plaintiff united in the petition for the defendant's discharge.]

[*Or*, That the plaintiff accepted a dividend from the estate of the defendant, under the said proceedings.]

No. 207.

vi. *Novation.*

[TITLE.]

The defendant answers to the complaint:

That on the day of, 18.., at, at the request of the plaintiff, he made his promissory note [*or*, executed a bond, under his hand and seal,] to one A. B., for dollars, in discharge of the indebtedness stated in the complaint.

ANSWERS.

No. 208.

vii. *Arbitration and award.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., the plaintiff and defendant mutually submitted the demand set forth in the complaint to the arbitration of A. B. and C. D.

II. That on the day of, 18.., at, the said A. B. and C. D. made and published their award [by which they declared the plaintiff not entitled to any part of his said demand.]

No. 209.

viii. *Former judgment.*

[TITLE.]

The defendant answers to the complaint:

That on the day of, 18.., at, in an action then pending in the [supreme] court, between A. B., plaintiff, and C. D., defendant, and for the same cause of action as that set forth in the complaint herein, judgment was duly rendered [*describing the judgment.*]

No. 210.

ix. *Statute of limitations.*

[TITLE.]

The defendant answers to the complaint:

That the cause of action, stated therein, did not accrue within years before the commencement of this action.

ANSWERS

No. 211.

x. By a surety, pleading an alteration of the contract.

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at, [*or*, at some time and place unknown to the defendant,] the plaintiff agreed with A. B., in the complaint mentioned, in consideration of, [*or*, for a valuable consideration,] to [extend the time of payment] of the [rent] guaranteed by the defendant [..... days.]

II. That the defendant had no knowledge of [*or*, did not assent to] the said [extension.]

No. 212.

xi. Reducing value and pleading payment (to No. 33.)

[TITLE.]

The defendant answers to the complaint:

I. That the goods mentioned therein were worth no more than dollars.

II. That he has paid that sum to the plaintiff.

No. 213.

xii. Reducing amount promised and pleading payment (to No. 32.)

[TITLE.]

The defendant answers to the complaint:

I. That he promised to pay the plaintiff dollars only.

II. That he has paid that sum to the plaintiff.

ANSWERS

No. 214.

xiii. *Explaining the contract, and showing a breach, as to delivery
(to Nos. 36 and 37.)*

[TITLE.]

The defendant answers to the complaint:

I. That it was a part of the agreement referred to in the complaint, that the plaintiff should deliver the goods sold at

II. That the said goods have not been so delivered.

No. 215.

xiv. *The same, as to quality (to No. 38.)*

[TITLE.]

The defendant answers to the complaint:

I. That it was a part of the agreement referred to in the complaint, that the [furniture therein mentioned should be made of rosewood.]

II. That the said [furniture] was not [made of rosewood.]'

¹ It will be observed that these are answers to complaints for not accepting goods sold. It is therefore unnecessary to state more than is here alleged. If the goods had been delivered, of course a return, or offer to return, should be pleaded.

ANSWERS.

No. 216.

xv. *Breach of warranty by plaintiff (to No. 39.)*

[TITLE.]

The defendant answers to the complaint:

I. That the goods therein mentioned were warranted by the plaintiff to be [genuine chinaware.]

II. That they were not [genuine chinaware.]¹

No. 217.

xvi. *The same (to Nos. 40 and 41.)*

[TITLE.]

The defendant answers to the complaint:

I. That the plaintiff warranted the property therein mentioned, to be free from all incumbrances.

II. That there was then, and still is, a mortgage on the same, in the sum of dollars, unsatisfied of record, in book, page, of mortgages, in the office of the clerk of the county of

No. 218.

xvii. *Surrender.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., he surrendered to the plaintiff² the premises mentioned in the complaint.

¹ See note on page 145.² It is not necessary to allege that the plaintiff accepted the premises. The surrender is complete unless the landlord expressly dissents. (*Thompson v. Leach*, 2 Salk., 618; decided in House of Lords, 1692.)

ANSWERS.

[II. That before that time he paid to the plaintiff all the rent which had accrued thereon.]

No. 219.

xviii. *Eviction.*

[TITLE.]

The defendant answers to the complaint:

That on the day of, 18.., the plaintiff evicted him from the premises mentioned in the complaint, and has ever since kept him out of possession thereof, [*or*, and kept him out of possession thereof until after the day of 18..]¹

Sec. 5. JUSTIFICATION IN ACTIONS FOR WRONGS.

No. 220.

i. *Truth of publication.*

[TITLE.]

The defendant answers to the complaint:

That on the day of, 18.., at, the plaintiff stole from [the defendant, one bale of hay,] to which the defendant referred when speaking [*or*, printing, *or*, writing] the words stated in the complaint.

¹ See *Vernam v. Smith*, 15 N. Y., 333.

ANSWERS.

No. 221.

ii. *Privileged publication.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., at, an action was tried in the court of, in which A. B. was plaintiff, and the plaintiff herein was defendant, [*or*, an indictment having been found against the plaintiff for, he was tried therefor in the court of sessions for the county of, *or otherwise.*]

II. That the article published in the defendant's newspaper, as stated in the complaint, was a fair and true report of the [testimony of one of the witnesses, named C. D.,] made in the course of the said trial.

No. 222.

iii. *Privileged communication (to No. 130.)*

The defendant answers to the complaint:

I. That he was, at the time of uttering the words mentioned in the complaint, the [confidential clerk] of A. B.

II. That the said A. B. inquired of the defendant the character of the plaintiff, [with a view to employing him as a clerk, *or otherwise*] and the defendant then stated to him the matter referred to in the complaint.

III. That the defendant had probable cause for believing, and did believe, the same to be true.

ANSWERS.

No. 223.

iv. *The same — another form.*

[TITLE.]

The defendant answers to the complaint:

I. That at the time of publishing the words mentioned in the complaint, an action was pending in the [supreme] court, between [the parties to this action.]

II. That at that time this defendant applied to A. B., a justice of the said court, for an order of, and upon his application presented to the said justice an affidavit containing the words complained of, which affidavit was pertinent to the said application.

III. That the defendant did not in any other way publish the said words.

No. 224.

v. *Self-defense.*

[TITLE.]

The defendant answers to the complaint:

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the acts complained of in self-defense.

ANSWERS.

No. 225.

vi. *Leave and license.*

[TITLE.]

The defendant answers to the complaint:

That the acts complained of were done by leave of the plaintiff.

No. 226.

vii. *Property distrained doing damage.*

[TITLE.]

The defendant answers to the complaint:

I. That at the time of taking and removing the cattle of the plaintiff, as stated in the complaint, the defendant [*or, one A. B.*] was lawfully possessed of the land on which they were taken.

II. That the said cattle were at that time doing damage thereon.

III. That the defendant [*or, the defendant by direction of the said A. B.*] removed the said cattle from the said land, with as little violence as possible, and took them to the public pound in

No. 227.

viii. *Lien upon goods detained.*

[TITLE.]

The defendant answers to the complaint:

I. That on the day of, 18.., the plaintiff deposited the goods mentioned in the complaint with the defendant for storage, agreeing to pay for the same [twenty-five cents] per [ton] per [month.]

II. That the defendant has always been, and still is, ready and willing to deliver the said goods to the plaintiff upon payment of the storage money due.

III. That the plaintiff has not paid or tendered to the defendant the storage money due.

ANSWERS.

Sec. 6. ANSWERS CONTAINING SEVERAL DEFENSES.

No. 228.

i. *Defense in an action for lands, that the plaintiff's grant was void, and that the defendant has the equitable title.*

[TITLE.]

The defendant answers to the complaint:

First: For a first defense:

I. That the grant of William Smith to the plaintiff, referred to in the complaint, was delivered at a time when the land mentioned therein was in the actual possession of the defendant, claiming under a title adverse to that of the said William Smith.

Second: For a second defense:

I. That on the day of, 18..., the said William Smith executed to the defendant a deed, whereby he granted to him a piece of land [*describe, as in the deed.*]

II. That by a mutual mistake of the parties thereto, the said deed did not include the land mentioned in the complaint; but it was their intention that it should, and they, at the time of its execution, believed that it did include the same, and the defendant, in such belief, paid to the said Smith the price thereof

ANSWERS.

No. 229.

ii. *Answer to a complaint for libel; setting up a defense, and mitigating circumstances.*

[TITLE.]

The defendant answers to the complaint :

First: For a defense :

That the publication complained of was true. [*If the alleged libel was not specific in its charges, state the facts upon which it was founded.*]

Second: As mitigating circumstances :

I. That on the day of, 18..., the plaintiff accused one A. B. of a burglary at

II. That thereupon an officer of the police of took the said A. B. into custody, and conducted him to a station-house.

III. That while at the station-house, the said A. B. made to the captain of police there in command, a statement, which is fairly and truly reported in the publication complained of, [*or, made a statement to the effect that the burglary with which he was charged was planned by the plaintiff, and was effected by him and the plaintiff in concert, that they quarreled over the division of the plunder, and that thereupon the plaintiff charged him with the robbery.*]

IV. That afterwards the plaintiff was arrested by a police officer, and conveyed before C. D., a police justice of the city of, and held to bail by the said justice to answer the charges of the said A. B.

V. That the publication complained of contained a fair and true statement of the preceding circumstances.

VI. That it was published in a newspaper belonging to the defendant, by his employees, without his knowledge or consent.

VII. That the persons publishing the same inserted it as an item of public news, without malice, believing the same to be true.

ANSWERS.

TITLE IV.

COUNTER-CLAIM.

No. 230.

i. *Counter-claim alone.*

[TITLE.]

The defendant answers to the complaint:

For a counter-claim:

[*State a cause of action precisely as in a complaint.*]Wherefore the defendant demands judgment for
dollars.

No. 231.

ii. *Defense and counter-claim.*

[TITLE.]

The defendant answers to the complaint:

First: For a defense thereto:[*State defense as in any of the preceding forms.*]*Second:* For a counter-claim [*as in No. 230 to the end.*]

No. 232.

iii. *Several defenses, and a counter-claim (answer to No. 88.)*

[TITLE.]

The defendant answers to the complaint:

First: To the first claim:

I. That no allegation in the first article thereof is true.

II. That as to the second article thereof, he has no knowledge, or information sufficient to form a belief, as to the truth of the same.

Second: To the second claim:

That the note mentioned therein is not his note.

Third: To the third claim:

I. For a first defense:

1. That it was a part of the agreement referred to in the complaint, that the plaintiff should not sell goods for any other person than the defendant;

2. That the plaintiff, during the period of his service mentioned in the complaint, sold sundry goods for one Benjamin Brown, and for other persons whose names are unknown to the defendant, without the defendant's consent.

II. For a second defense:

That he has fully paid the plaintiff for his services.

Fourth: For a counter-claim:

I. That between the day of, 18.., and the day of, 18.., the plaintiff received from Daniel Down dollars, for the use of the defendant.

II. That he has not paid the same.

Wherefore the defendant demands judgment for dollars, with interest from the day of, 18...

ANSWERS.

CHAPTER IV.

SUBSEQUENT PLEADINGS.

TITLE I

No. 233.

Demurrer to answer.

[TITLE.]

Demurrer to answer.

The plaintiff demurs to the answer of the defendant [*or*, the first, *or other* defense (*or*, counter-claim) contained in the answer of the defendant,] for insufficiency in not stating facts sufficient to constitute a defense. [*or*, counter-claim.]

A. B.,

Plaintiff's Attorney.[*Date.*]

 ANSWERS.

TITLE II

REPLY.

No. 234.

i. *To counter-claim.*

[TITLE.]

Reply.

The plaintiff replies to the counter-claim contained in the answer of the defendant [*or, the first, or, other counter-claim contained in the answer of the defendant.*]

I
 II
 III

A. B.,
Plaintiff's Attorney.

[Date.]

No. 235.

ii. *To defense by way of avoidance when directed by the court, under the last paragraph of section 152.*

[TITLE.]

The plaintiff, by direction of the court, replies to the new matter constituting the defense, by way of avoidance, [*or, to the second defense, or other*] contained in the answer of the defendant.

I
 II
 III

A. B.,
Plaintiff's Attorney.

[Date.]

ANSWERS.

TITLE III

No. 236.

Demurrer to reply.

[TITLE.]

Demurrer to reply.

The defendant demurs to the plaintiff's reply [*or, first, or, other reply*] for insufficiency, in not stating facts sufficient to constitute a reply.

[*Date.*]

C. D.,
Defendant's Attorney.

PART III.

PROVISIONAL REMEDIES.

CHAPTER I. ARREST.

II. REQUISITION.

III. INJUNCTION.

IV. ATTACHMENT.

V. RECEIVER.

VI. ORDERS UPON ADMISSIONS IN THE PLEADINGS.

CHAPTER I.

ARREST.

No. 237.

i. *Affidavit showing that money has been received by the defendant in a fiduciary capacity.*

[TITLE.]

COUNTY OF: John Smith, of, being
duly sworn, says as follows :¹

1. On the of, 18..., at, I delivered
to John Jones, of, note broker, a promissory note for

¹ It will be observed that we divide affidavits into paragraphs, and use the first person. In so doing we follow the practice of all the English courts, as established for eight years past. Affidavits thus drawn are much more perspicuous, and will be likely to impress more deeply than heretofore, on the mind of the deponent, a sense of his responsibility for his statements.

ARREST.

..... dollars, dated the day of, 18.., made by John Johnson to my order, and indorsed by me, for sale on my account, and for no other purpose whatever;

2. I gave no authority to the said Jones to retain any part of the proceeds of the said note, for any time whatever;

3. On the of, 18.., I was informed by the clerk of the said Jones, that he had sold the said note; and I believe the same to be true;

4. I have demanded the proceeds of the said note from the said Jones, but he has not paid or accounted for the same;

5. I have sustained a loss by the premises, of dollars.

JOHN SMITH

Sworn before me, the }
day of, 18.., }

A. B., *Commissioner of Deeds.*

No. 238.

ii. *Undertaking on arrest.*

[TITLE.]

WHEREAS, the plaintiff is about to apply [*or, has applied*] for an order to arrest the above named John Jones:

NOW, THEREFORE, we, John Johnson, of, [merchant,] and John Jenks, of, [builder,] undertake in the sum of dollars, that if the said defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of his arrest in this action.

JOHN JOHNSON.

JOHN JENKS.

[ALBANY, *January 1, 1861.*]

ARREST.

COUNTY OF: John Johnson and John Jenks, being duly sworn, severally say, each for himself, as follows:

1. I am a resident and householder [or, freeholder] in this state;¹

2. I am worth dollars [*double the sum above specified*] over all my debts and liabilities, and exclusive of property exempt from execution.

JOHN JOHNSON.

JOHN JENKS.

Sworn before me, &c.,

A. B., *Commissioner, &c.*

COUNTY OF

I certify that on this of, 18.., John Johnson and John Jenks, known to me to be the persons who executed the above undertaking, appeared before me and severally acknowledged that they executed the same.

A. B.,

Commissioner of Deeds.

No. 239.

iii. *Order of arrest.*

[TITLE.]

In the name of

The People of the State of New York:

For the causes stated in the annexed affidavit:

YOU ARE COMMANDED forthwith to arrest the above named John Jones, and to hold him to bail in the sum of

¹ This is not as full as may be required on exception, but is full enough for the purpose.

² We think all orders on which proceedings for contempt may be founded, or which deprive a citizen of his liberty, should run either in the name of a court or of the people.

ARREST.

dollars; and to return this order to A. B., the plaintiff's attorney, at his office [No. street,] in the city [or, town] of, on the day of, 18..

HENRY HOGEBOOM.

{ALBANY, *January 1, 1861.*}

A. B.,

Plaintiff's Attorney.

TO THE SHERIFF OF THE COUNTY OF

No. 240.

iv. *Undertaking of bail (under § 187.)*

[TITLE.]

WHEREAS, the above named John Jones has been arrested in this action:

NOW, THEREFORE, we, Benjamin Brown, of, [tailor,] and Daniel Down, of, [grocer,] undertake in the sum of dollars, that if the defendant is discharged from arrest, he shall, at all times, render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce the judgment therein.

[Date.]

[Signature.]

[Justification and acknowledgment as in No. 238.]

No. 241.

v. *Undertaking of bail in an action for chattels (under §§ 187 and 211.)*

[TITLE.]

WHEREAS, the above named John Jones has been arrested for the cause mentioned in the third subdivision of section 179 of the Code of Procedure:

ARREST.

NOW, THEREFORE, we, [*as in No. 240 to the end, and add.:*] and also for the delivery of [*describe the property*] to the plaintiff, if such delivery be adjudged; and for the payment to the plaintiff of such sum as may, for any cause, be recovered against the defendant in this action.

[*Date.*]

[*Signature.*]

[*Justification and acknowledgment as in No. 238.*]

 REQUISITION.

CHAPTER II

REQUISITION.

No. 242.

i. *Affidavit of the plaintiff (under § 207.)*

[TITLE.]

COUNTY OF: John Smith, of, being duly sworn, says as follows:

1. I am the owner of [a piano forte, *or*] the following property: [*describing it particularly.*]

[*Or*, 1. The following goods,, were stored with me by their owner, for months, which storage is worth dollars; and they have been taken from me without my consent, and without payment of said storage. *Or state any facts showing a right to the possession, avoiding legal conclusions.*]

2. The said property is wrongfully detained by John Jones, at [No. 100 State street, Albany, or elsewhere.]

3. The alleged cause of such detention, according to my best knowledge, information and belief, is [*describe it particularly.*]

[*Or*, 3. I have no knowledge or information of any cause alleged for such detention.]

4. The said property has not been taken for a tax, assessment, or fine, pursuant to any statute.

5. It has not been seized under any execution or attachment against my property.

[*Or, if so seized, show that it was legally exempt, as thus:*

5. That it was seized under an execution, but was part of my necessary household furniture, which amounted in the aggregate to the value of less than \$250, besides the articles specified in the Revised Statutes as exempt; and I am a householder, supporting a family.]

6. The said property is worth dollars.

JOHN SMITH.

Sworn before me, &c.

REQUISITION.

No. 243.

ii. *Requisition indorsed on the affidavit (under § 208.)*

In the name of

The People of the State of New York,

For the causes stated in the within affidavit:

YOU ARE REQUIRED to take from John Jones the property within described, and to deliver it to the plaintiff.

A. B.,

Plaintiff's Attorney.

[ALBANY, January 1, 1861.]

TO THE SHERIFF OF THE COUNTY OF

No. 244.

iii. *Undertaking on the part of the plaintiff (under § 209.)*

[TITLE.]

WHEREAS, the plaintiff claims the delivery of [*specify the property*.:]

NOW, THEREFORE, we, John Johnson, of, [merchant,] and John Jenks, of, [builder,] undertake in the sum of dollars, that the plaintiff shall prosecute this action, return the said property to the defendant, if such return be adjudged, and pay to him such sum as may, for any cause be recovered against the plaintiff in this action.

[Date.]

[Signatures.]

[Justification and Acknowledgment as in No. 238.]

No. 245.

iv. *Undertaking on the part of the defendant (under § 211.)*

[TITLE.]

WHEREAS, the plaintiff has claimed, and the sheriff of the county of, has taken the following property [*describing it*.:]

REQUISITION.

NOW, THEREFORE, we, Benjamin Brown, of, [tailor], and Daniel Down, of, [grocer], undertake in the sum of dollars, that if the said property be returned to the defendant, it shall be delivered to the plaintiff, if such delivery be adjudged; and that the plaintiff shall be paid such sum as may, for any cause, be recovered against the defendant in this action.

[Date.]

[Signatures.]

[Acknowledgment as in No. 238, and annex notice of justification, under § 212.]

No. 246.

v. *Undertaking to indemnify against the claim of a third person.*

[TITLE.]

WHEREAS, the plaintiff has claimed the following property [*describing it*]; and Stephen Stone, of, claims the same as his property :

NOW, THEREFORE, we, John Johnson, of, [merchant], and John Jenks, of, [builder], undertake in the sum of dollars, to indemnify the sheriff of the county of against the claim of the said Stone, if the said property be delivered to the plaintiff.

[Date.]

[Signatures.]

COUNTY OF : John Johnson and John Jenks, being duly sworn, severally say, each for himself, as follows :

1. I am a householder and freeholder in the county of

.

2. I am worth dollars [*double the value of the property*], over all my debts and liabilities, and exclusive of property exempt from execution.

[Signatures.]

Sworn before me, &c.

[Acknowledgment as in No. 238.]

INJUNCTION.

CHAPTER III.

INJUNCTION.

No. 247.

i. *Undertaking upon injunction (under § 222.)*

[TITLE.]

WHEREAS, the plaintiff is about to apply [*or, has applied*] for an injunction restraining the above named John Jones from [*state the object of the injunction:*]

NOW, THEREFORE, we, John Johnson, of, [merchant,] and John Jenks, of, [builder,] undertake in the sum of dollars, to pay to the said John Jones such damages as he may sustain by reason of such injunction, if the court shall finally decide that the plaintiff is not entitled thereto; the damages to be ascertained by a reference, or otherwise, as the court may direct.

[Date.]

[Signatures.]

[Justification and acknowledgment as in No. 238.]

No. 248.

ii. *Injunction; by a judge out of court.*

In the name of

The People of the State of New York;

For the causes stated in the annexed [complaint and affidavits:]

YOU ARE COMMANDED to refrain from

 until the further order of the court.

A. B.,

Justice of the court.

[ALBANY, January 1, 1861.]

To JOHN JONES, *Defendant.*

¹ The language of the Code in regard to these various undertakings is not uniform, but as the spirit of its provisions is the same throughout, we have adopted a common form for all.

INJUNCTION.

No. 249.

iii. *Injunction with order to show cause.*

[TITLE.]

[As in No. 248, to the word "until," and continue]: the decision of the motion herein mentioned.

And you are required to show cause before me [or, at a special term of this court], at....., on the day of, 18.., why this injunction should not be continued until judgment be rendered in this action.

[Date.]

[Judge's signature.]

[Address.]

No. 250.

iv. *Injunction by the court.*

SUPREME COURT.

JOHN SMITH
against
JOHN JONES.

} At a special term, held at the, in
the of, on the day
of, 18..

Present — A. B., *Justice.*

On reading and filing the complaint, and the affidavits of and, dated the day of, 18..; and on motion of C. D., counsel for plaintiff:

ORDERED; that the above named John Jones be commanded to refrain from until the further order of this court.

E. P.,
Clerk.

C. D., *Plaintiff's Attorney.*

ATTACHMENT.

CHAPTER IV.

ATTACHMENT.

No. 251.

i. *Affidavit on application for attachment.*

[TITLE.]

COUNTY OF : John Smith, of, being duly sworn, says as follows:

1. [*State the cause of action, as thus*]: On the day of, 18.., at, I sold and delivered to John Jones, of, sundry parcels of dry goods, of the value of dollars, for which he has not paid;

2. I am about to commence an action in this court against the said Jones, and have issued a summons therein;

3. The said Jones has left this state, and gone to

4. I am informed by A. B., and believe, that the said Jones stated to him, on the day of, 18.., that "he meant to get out of the way for a while, and let the storm blow over;" meaning that he wished to avoid his creditors.

5. The said A. B., being the clerk of the said Jones, refuses to make his affidavit.

JOHN SMITH.

Sworn before me, &c.

No. 252.

ii. *Undertaking upon attachment.*

[TITLE.]

WHEREAS, the plaintiff is about to apply for a warrant of attachment against the property of the above named John Jones:

ATTACHMENT.

NOW, THEREFORE, we, John Johnson, of, [merchant,
and John Jenks, of, [builder,] undertake in the sum of
. dollars, that if the said warrant be granted, and the
defendant recover judgment in this action, the plaintiff shall pay
all costs that may be awarded to the defendant in the same, and
all damages which he may sustain by reason of such attachment.

[Date.]

[Signatures.]

[Justification and acknowledgment as in No. 238.]

No. 253.

iii. *Warrant of attachment.*

[TITLE.]

In the name of

The People of the State of New York :

It appearing by affidavit to the officer granting this warrant,
that the plaintiff is entitled to recover from the defendant
. . . . dollars, with interest thereon from the . . . day of ,
18..; and that the above named John Jones is not a resident
of this state [*or otherwise as the case may be:*]

YOU ARE COMMANDED forthwith to attach and safely keep all
the property of the said John Jones in your county, or so much
thereof as may be sufficient to satisfy the said demand, with
costs and expenses.

[Date.]

[Judge's signature.]

C. D., *Plaintiff's Attorney.*

TO THE SHERIFF OF THE COUNTY OF

No. 254.

iv. *Undertaking on discharge of attachment.*

[TITLE.]

WHEREAS, the sheriff of the county of has attached
the property of the defendant [*or, of the above named John
Jones*]:

ATTACHMENT.

Now, THEREFORE, we, Benjamin Brown, of, [tailor],
and Daniel Down, of, [grocer], undertake in the sum
of dollars, that if the said attachment be discharged,
we will pay to the plaintiff, on demand, the amount of the judg-
ment that may be recovered against the defendant in this action.

[Date.]

[Signatures.]

[Justification and acknowledgment as in No. 238.]

RECEIVER.

CHAPTER V.

RECEIVER.

No. 255.

i. *Order for reference to appoint a receiver.*

SUPREME COURT.

JOHN SMITH
against
 JOHN JONES.

} At a special term, held at the
 } in the of, on the
 } day of, 18..

Present—A. B., *Justice*.

On reading and filing [the affidavits of B. C., and C. D., dated the day of, 18., and on] the pleadings herein; on motion of E. F., counsel for plaintiff, after hearing G. H., counsel for defendant:

ORDERED: 1. That it be referred to Esq., of [counsellor at law], to appoint a receiver of [*specify the property with as much particularity as possible*].

2. That the said referee take from such receiver security to the amount of dollars, with two or more sufficient sureties, and file the same with the clerk of this court [*or, of the county of*]

3. That upon the filing of such security, and of the said referee's report, such receiver shall be vested with the usual rights and powers of receivers under this court: [*and specify any peculiar powers bestowed upon him.*]

J. L.,
Clerk.

 RECEIVER.

No. 256.

ii. *Order for reference to report a receiver.*

[TITLE.]

[CAPTION.]

On reading and filing [the affidavits of B. C., and C. D., dated the day of, 18.., and on] the pleadings herein; on motion of E. F., counsel for plaintiff, after hearing G. H., counsel for defendant;

ORDERED: 1. That a receiver be appointed to take charge of [*specify the property*].

2. That it be referred to, Esq., of, [counsellor at law], to report a suitable person to be appointed such receiver, and to report the names of sureties proposed by him, with the amount for which they should be liable, and their responsibility for the same.

J. L.,
Clerk.

No. 257.

iii. *Order confirming referee's report*¹

[TITLE.]

[CAPTION.]

On reading and filing the report of, Esq., a referee appointed by the court on the day of, 18.., to report a suitable person for receiver in this action: on motion of E. F., counsel for plaintiff, after hearing G. H., counsel for defendant:

ORDERED: 1. That the said report be confirmed.

2. That James Brown, of, [merchant], be appointed receiver of [*describe the property*].

¹ This order is only necessary when a referee is appointed to report a receiver.

RECEIVER.

3. That William Brown, of, [merchant], and John Town, of, [builder], be approved as sureties for the said receiver, and that they file with the clerk of the county of, the bond heretofore approved by the said referee, in the penalty of dollars.

4. That the appointment of the said receiver shall date from the filing of the said bond.

5. That the said receiver shall have all the usual rights and powers of receivers under this court [*and specify any peculiar powers conferred.*]

J. L.,
Clerk.

ORDERS UPON ADMISSIONS.

CHAPTER VI.

ORDERS UPON ADMISSIONS IN THE PLEADINGS, ETC.

No. 258.

i. *Order to deliver property.*

[TITLE.]

[CAPTION.]

On the pleadings in this action, whereby it appears that the defendant admits that he has in his possession [*or*, under his control], the property hereafter mentioned, and that it is the property of the plaintiff: on motion of E. F., counsel for plaintiff, after hearing G. H., counsel for defendant;

ORDERED: That the defendant, John Jones, deposit in court [*or*, deliver to the plaintiff] within . . . days after the service of this order, [*specifying the property*], subject to the further direction of the court; [and pay dollars, costs of motion].

J. L.,
Clerk.

No. 259.

ii. *Order to satisfy part of the plaintiff's claim.*

[TITLE.]

[CAPTION.]

On the pleadings in this action, whereby it appears that the defendant admits that the plaintiff justly claims from him dollars; on motion of E. F., counsel for plaintiff, after hearing G. H., counsel for defendant;

ORDERED: 1. That the defendant pay to the plaintiff, within . . . days after service of this order, dollars, with inter-

ORDERS UPON ADMISSIONS.

est from the day of, 18.., [and dollars, costs of motion].

2. That the plaintiff have liberty to issue execution against the property [and person] of the defendant for the same, if not so paid.

J. L.,
Clerk.

PART IV.

TRIAL AND ITS INCIDENTS.

- CHAPTER I. TRIAL BY JURY.
- II. TRIAL BY THE COURT.
- III. TRIAL BY REFEREE.

CHAPTER I.

TRIAL BY JURY.

- SECTION 1. Verdicts, as entered in the minutes.
- 2. Special verdict.
 - 3. Case and exceptions.

Sec. 1. VERDICTS, AS ENTERED IN THE MINUTES OF THE COURT.

No. 260.

- i. *Verdict in an action for money only (under §§ 260 and 261).*
- SUPREME COURT.

JOHN SMITH	}	At a [circuit] court, held at the
<i>against</i>		in the of, on the
JOHN JONES.		day of, 18..

Present—A. B., *Justice.*

.....
.....
.....
.....
.....
.....

Jurors.

.....
.....
.....
.....
.....

Plaintiff's Witnesses.

Defendant's Witnesses.

 TRIAL BY JURY.

This action being brought to trial before a jury, they find a verdict [upon all the issues of fact for the plaintiff, and assess the amount of his recovery at dollars; *or*, for the defendant; *or*, for the plaintiff, upon the first issue, and for the defendant, upon the second issue, and assess the amount of the plaintiff's recovery on the first issue at dollars; *or*, for the defendant, and assess the amount of his counter-claim beyond the plaintiff's claim, at dollars.]

No. 261.

ii. *Verdict in an action for chattels.*

[TITLE.]

[CAPTION.]

[*Names of jurors and witnesses.*]

This action being brought to trial before a jury, they find a verdict upon all the issues of fact for the plaintiff [*or*, defendant] and assess [the value of the property at dollars, and¹] the plaintiff's damages by reason of the detention of the property [*or*, the defendant's damages by reason of the taking and withholding of the property,] at dollars.

No. 262.

iii. *Verdict in an action for land.*

[TITLE.]

[CAPTION.]

[*Names of jurors and witnesses.*]

This action being brought to trial before a jury, they find a verdict upon all the issues of fact in favor of the plaintiff, for the premises claimed in the complaint: [*or*, *if for a part only*, describe the land: *or*, for one equal undivided half of the premises, &c.]

¹ If the property be in the possession of the successful party, this clause is unnecessary.

TRIAL BY JURY.

to hold in fee [*or otherwise, specifying the nature of the tenure*]; and they assess the plaintiff's damages by reason of the withholding of the same, at dollars.

No. 263.

iv. *Verdict subject to the opinion of the court.*

[*As in any of the preceding forms, adding:*] subject to the opinion of the court, at a general term, upon the questions of law.

Sec. 2. SPECIAL VERDICT.

No. 264.

[TITLE.]

[CAPTION.]

[*Names of jurors and witnesses.*]

This action being brought to trial before a jury, upon all the issues of fact; [*or, upon the following issues of fact; specifying them*], they find as follows:

1.
2.
3.

Upon these facts, the jury respectfully leave the judgment to the court.

Sec. 3. CASE AND EXCEPTIONS.

No. 265.

i. *Case without exceptions.*

[TITLE.]

This action came on for trial before, one of the justices of this court, and a jury, at, on, when the following [*or, the following among other*] proceedings took place:

 TRIAL BY JURY.

[Then state the proceedings with as much brevity as possible, and so far only as they are necessary for the motion intended to be made. The pleadings are sometimes inserted in the case. This is improper, as the case is part of the judgment roll, which of course contains the pleadings.]

No. 266.

ii. *Case with exceptions.*

[TITLE.]

This action came on for trial before, one of the justices of this court, and a jury, at, on, when the following [or, the following among other] proceedings took place:

[Then state the proceedings with as much brevity as possible, and so far only as they are necessary for the motion intended to be made, inserting the exceptions, as for example thus:

The plaintiff's counsel asked the witness the following question: The defendant's counsel objected; the court overruled the question, and the plaintiff's counsel excepted.

If the judge direct the exceptions to be first heard at the general term, an additional entry may be made, as follows:

And thereupon, the said justice directed the said exceptions to be heard in the first instance at the general term, and the judgment in the meantime to be suspended.]

No. 267.

iii. *Exceptions alone.*

[TITLE.]

This action came on for trial before, one of the justices of this court, and a jury, at, on, when the following exceptions were taken:

[State the exceptions with so much of the evidence as is necessary to explain them, and if they are to be first heard at the general term, make the same entry as at the end of the last form.]

 TRIAL BY THE COURT.

CHAPTER II.

TRIAL BY THE COURT.

No. 268.

i. *Decision of the judge.*

[TITLE.]

[CAPTION.]

This action being brought to trial before the court, without a jury [*if the action be one in which the parties have a right to a jury, state the manner of waiver, under § 266*], the court finds the following facts:

- I.
- II.
- III.

And the following conclusions of law thereupon:

- 1.
- 2.
- 3.

Judgment must therefore be entered for

.....

A. B.,
Justice.

TRIAL BY THE COURT.

No. 269.

ii. *Finding upon a trial by the court ; with findings of a jury upon specific issues referred to them.*¹

SUPERIOR COURT OF THE CITY OF NEW YORK.

J. M. <i>against</i> THE HUDSON RIVER RAILROAD CO.	}
--	---

This action having been brought on to be tried before the undersigned, one of the justices of this court, without a jury, as to the issues not heretofore specially ordered to be tried by a jury, and also upon the finding and verdict of a jury, upon certain issues herein which have been heretofore specially ordered to be, and which, pursuant to such order, have been heretofore tried by a jury ; which latter issues, and the verdict of the jury thereon, are hereinafter particularly stated ; and having heard the testimony offered before me on behalf of the plaintiff, and the Hudson River Railroad Company, and having heard the counsel of the respective parties, I find the facts of the case, exclusive of those found by the jury on the issues so determined by them, to be as follows :

First : The plaintiff is the owner in fee of the lot on the south-westerly corner of Tenth avenue and Thirtieth street, in the city of New York. He purchased the lot for \$2,500, on the 24th of April, 1849, before the railroad track was laid ; but bought it anticipating that the railroad would enter Tenth avenue, at or near Thirtieth street.

After the road was built, as the track was first laid, the plaintiff erected on his said lot a four-story brick dwelling house, intended for a hotel, and which, after it was completed, was occupied by his lessee for that purpose.

Second : The Hudson River Railroad Company is a corporation, created by the legislature of the state, by an act entitled "An

¹ This is an actual finding by CH. J. BOSWORTH.

TRIAL BY THE COURT.

act to authorize the construction of a railroad from New York to Albany," passed May 12, 1846, and various acts amending the same, and keep an office for the transaction of business in the city of New York, which acts were put in evidence and are to be deemed a part of this case.

Third: The mayor, aldermen and commonalty of the city of New York, in common council convened, passed an ordinance, a true copy of which is annexed to the complaint in this action, which ordinance was adopted by the board of aldermen, April 30th, 1847, and by the board of assistant aldermen, May 3d, 1847, and was approved by the mayor, May 6th, 1847.

Fourth: The Hudson River Railroad Company, within one year from the passage of the said ordinance, and before entering upon any contract for grading, filed in the office of the street commissioner of said city, a map showing the location and intended grade of said railroad. But said map did not show whether the curvilinear parts of the said road would or would not necessarily approach as near said southwesterly corner as they were first laid.

Fifth: The Hudson River Railroad Company constructed their road as it was originally built, as to the line and grade thereof, in conformity with the provisions contained in their charter and the said ordinance of the mayor, aldermen and commonalty of the city of New York, unless upon the facts found by the jury in answer to the questions specially submitted to them, and upon the facts found by me, the conclusion of law is, that it was not constructed in conformity to such ordinance.

Sixth: The said company laid their track at or in the vicinity of the southwesterly corner of Tenth avenue and Thirtieth street as it was originally built, sixteen and a quarter inches from the curbstone, and so near the southwesterly corner that as the cars passed said corner they projected over the curb and sidewalk about eighteen inches; the said track lying so near said corner, and the running and use of the cars thereon, interposed obstructions to the access to said house of persons having occasion to do business there, which have been obviated by the removal of the track to the place where it was laid in November, 1853.

TRIAL BY THE COURT.

Seventh: The plaintiff, while said track was being built, did not complain to any officers of the said company, nor remonstrate with them against laying the track as near the curb as it was originally laid; the curb, however, was not set until after the track was laid.

Eighth: In August, 1851, the mayor, aldermen and commonalty, in common council convened, passed a second ordinance, which was approved by the mayor, August 11th, 1851, a true copy of which is annexed to the complaint, of which last ordinance the railroad company soon thereafter, and before the 8th of April, 1852, had notice; but no notice of the ordinance was legally served on the said company. In November, 1858, the said company altered the location of their track in the vicinity of said southwesterly corner, so as to conform to said last ordinance.

The track as originally laid, was completed at and in the vicinity of said corner, and thence below Thirtieth street, in the Tenth avenue, in or about September or October, 1849.

Ninth: The plaintiff, prior to commencing this action, but after he had leased the premises, as hereinafter stated, and particularly on the 8th of April, 1852, and also on the 22d of the following May, applied to the said company to remove the track of their railroad further from the said southwesterly corner, and complained that its close proximity to said corner was an injury to his said premises and the business of his said house. The railroad company, in answer to the application of the 22d of May, stated that it had been and was their intention to remove the said track as soon as the condition of the Tenth avenue would permit. It was not removed as soon as the condition of the Tenth avenue permitted it to be done, nor until after this action was commenced.

Tenth: The said track, as it was originally laid at and in the vicinity of said corner, was laid under the personal inspection and observation of a city surveyor attached to the office of the street commissioner, who was specially appointed by the street commissioner to inspect and oversee the laying of the said track, and to see that it was built as to line and grade in conformity with said first mentioned ordinance, and such directions as the

TRIAL BY THE COURT.

street commissioner might give in that behalf. But no affirmative or actual directions were given by the street commissioner or by the said inspector that the said tracks should be placed where they were first laid. The tracks at this corner were staked out but not laid before said inspector was appointed.

Eleventh: When plaintiff's said house was completed, he rented the same by an indenture of lease, dated September 19th, 1850, for five years and seven months from the 1st of October, 1850, at \$900 a year for each of the first two years, for \$1,000 for the third year, for \$1,100 for the fourth year, for \$1,200 for the fifth year, and at the rate of \$1,300 per year for the last seven months of said lease.

The questions of fact specially submitted to a jury, as hereinbefore stated, and their verdict thereon, are as follows:

I. Was the westerly track of the Hudson River railroad, as it was originally built, laid nearer to the curb at the south-westerly corner of Tenth avenue and Thirtieth street than was necessary?

To this question the jury answered, "Yes."

II. Did the laying of that track, as it was first located, prevent the plaintiff from obtaining as great a rent for his building on that corner as he would have obtained had it been laid where it now is?

Answer: "Yes."

III. If the second question is answered affirmatively, then say how much rent the plaintiff was, by that cause, prevented from obtaining, up to July 30th, 1852?

Answer: \$414. $\frac{1}{10}$, being at the rate of \$200 per year from October 1st, 1850, to July 30th, 1852, with interest since that time.

IV. Was that track at and in the vicinity of the south-westerly corner of Tenth avenue and Thirtieth street, originally laid and located in conformity with such directions

TRIAL BY THE COURT.

as to line and grade as were given by the street commissioner?

Answer: "Yes."

V. Did the plaintiff erect his said building on his said lot with knowledge of the course and track of the said railroad, as the same was in substance originally laid and built?

Answer: "Yes."

Upon the facts found by me, and upon the facts thus found by the jury, my conclusions as to the law are as follows:

1. That the Hudson River Railroad Company were fully authorized by competent authority to lay the track of their railroad, as they were first laid, at and in the vicinity of the northwesterly corner of Tenth avenue and Thirtieth street.

2. That for the consequential damage found by the verdict of the jury, arising from the diminished rent of the premises, in consequence of the tracks having been so placed, instead of being laid in the first instance where they now are, no action will lie against the railroad company.

3. That the plaintiff having, prior to the passage of the ordinance of August, 1851, leased the premises for a term of years which has not yet expired, no action can be maintained by him on the facts of this case to recover damages, in consequence of the railroad company not having removed the tracks, as directed by that ordinance, at as early a day as their duty required.

4. That a judgment should be entered, dismissing the complaint, but without costs, to be paid by either party to the other.

J. S. B.,
Justice.

[If either party desires to except to any conclusion of law contained in this decision, he may give notice of his exception, at any time within ten days after notice of the judgment. Exceptions to rulings at the trial, must be made then.]

If the party intending to appeal serve his draft of case or exceptions, within the ten days, no other notice of exception need be given;

 TRIAL BY THE COURT.

otherwise he should serve on the opposite party a notice of exception, which may be as follows :]

No. 270.

iii. *Notice of exception.*

[TITLE.]

Please take notice that the [plaintiff] excepts to the [first and third] conclusions of law found by the court in this action: [or, to so much of the conclusions, &c., as decides that]

Yours, &c.,

E. F.,

.....'s Attorney.

To G. H.,

.....'s Attorney.

No. 271.

iv. *Case and exceptions.*

[The forms used in cases of trial by jury, omitting the words "and a jury," are sufficient. See Nos. 265 to 267.]

[Exceptions should not be confounded with a notice of exceptions. The latter is merely for the purpose of apprising the opposite party what is intended to be excepted to. The former are the formal record of the exceptions, and the matters excepted to, so that the appellate court may see without reference to two papers what is the point of the objection. Where exceptions are taken, an appeal may be had to the general term without first moving at the special term for a new trial. The appellate tribunal may, if necessary or proper, order a new trial, though a new trial has not been moved for below.]

 TRIAL BY REFEREE.

CHAPTER III.

TRIAL BY REFEREE.

- SECTION 1. Order of reference.
 2. Report of referee.
 3. Case and exceptions.

Sec. 1. ORDER OF REFERENCE.

No. 272.

i. *By consent.*

[TITLE.]

[CAPTION.]

On reading and filing the consent of the parties, and on motion of, counsel for

ORDERED: That this action be referred to, Esq., of, [counsellor at law], to hear and decide all the issues therein: [*or specify the issues referred.*]

J. L.,
 Clerk.

No. 273.

ii. *Compulsorily, in cases of account.*

[TITLE.]

[CAPTION.]

On [reading and filing the affidavit of the plaintiff, dated the day of, 18.., and on] the pleadings in this action, by which it appears that the trial of the issues of fact [*or, of one of the issues of fact*] will require the examination of a long account; and on motion of, counsel for, after hearing, counsel for

ORDERED: [*as in No. 272*].

J. L.,
 Clerk.

TRIAL BY REFEREE.

No. 274.

iii. *Compulsorily, when a trial has been commenced, and the taking of an account is necessary before judgment.*

[TITLE.]

[CAPTION.]

The trial of this action having been commenced, and it appearing that the taking of the account hereafter mentioned is necessary for the information of the court before judgment; it is now, on motion of, counsel for, after hearing, counsel for ;

ORDERED: 1. That it be referred to, Esq., of, [counselor at law,] to take an account of ;

2. That the further trial of this action be adjourned until the coming in of the said account: [or, until the . . . day of, 18. . .]

J. L.,
Clerk.

No. 275.

iv. *Compulsorily, when the taking of an account is necessary to carry a judgment or order into effect.*

[TITLE.]

[CAPTION.]

A judgment [or, an order] having been entered in this action on the . . . day of, by which [reciting only so much as may be necessary to explain the reference], now on motion of, counsel for, after hearing, counsel for ;

ORDERED: That for the purpose of carrying the said [judgment] into effect, it be referred to, Esq., of, [counsellor at law], to take an account of

J. L.,
Clerk.

TRIAL BY REFEREE.

No. 276.

v. *Compulsorily, when a question of fact arises aside from the pleadings.*

[TITLE.]

[CAPTION.]

A motion having been made in this action, on the part of the plaintiff [*or, defendant*], for and upon that motion [*or whatever may be the circumstances requiring the reference*] a question of fact having arisen whether
.....
on motion of, counsel for, after hearing, counsel for ;

ORDERED: That it be referred to, Esq., [*&c.*], to report the facts relating to the said question.

J. L.,
Clerk.

Sec. 2. REPORT OF REFEREE.

No. 277.

i. *On all the issues.*

[TITLE.]

To the Supreme Court of the State of New York:

This action having been referred to me, by order dated the day of, 18.., to hear and decide all the issues therein, I respectfully report:

That on the day of, 18.., the same was duly brought to trial before me, at my office in the [city] of, counsel for both parties attending, and evidence received, and thereupon I find the following facts:

- I.
- II.
- III.

 TRIAL BY REFEREE.

I find as conclusions of law :

1.
2.
3.

And I therefore direct judgment to be entered for

C. D.,
Referee.

No. 278.

ii. *On a part of the issues, or on an account.*

[TITLE.]

To the court of :

A reference having been made to me, by order dated the
 day of, 18.., to, in this action,
 I respectfully report :

That I have heard both parties, and find the annexed account
 to be correct: [*or, find the following facts*] :

.....

C. D.,
Referee.

Sec. 3. CASE AND EXCEPTIONS.

*See Nos. 265 to 267, 270 and 271, which may be substantially
 followed.*



PART V.

JUDGMENTS AND JUDGMENT ROLLS.¹

CHAPTER I. JUDGMENTS FOR THE PLAINTIFF.

II. JUDGMENTS FOR THE DEFENDANT.

III. JUDGMENTS FOR SOME OF THE PARTIES ON EACH SIDE.

IV. JUDGMENTS ON APPEAL.

CHAPTER I.

JUDGMENTS FOR THE PLAINTIFF.

Title 1. IN ACTIONS FOR MONEY.

2. IN ACTIONS FOR CHATTELS.

3. IN ACTIONS FOR LANDS.

4. IN ACTIONS FOR SPECIAL RELIEF.

TITLE I.

JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR MONEY.

Section 1. On failure to answer.

2. On partial failure to answer.

3. On trial.

¹ The judgments are given here as they are to be entered in the judgment book.

JUDGMENTS FOR THE PLAINTIFF.

Sec. 1. ON FAILURE TO ANSWER.

No. 279.

i. *When the action is upon contract and the summons has been personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of
, 18.., by the personal service of the summons [with a copy
 of the complaint] on the defendant, [or, defendants, *naming them*,
and if the service has been made on different defendants on different
days, specify the times of each,] and due proof having been made
 and filed of such service,¹ and that no answer [or notice of ap-
 pearance] has been received from the defendant, [or, from any of
 the defendants,] [and on filing the clerk's report of the amount
 due as assessed by him,] it is now, on motion of, counsel
 for the plaintiff, adjudged that the plaintiff recover of the defend-
 ant [or, defendants, *naming them*] dollars, mentioned in
 the summons, [or, thus assessed,] with dollars costs
 of the action, making together dollars.

[If the action be against defendants jointly indebted upon contract,
and only some of them have been served, add at the end of the last
form the following: but this judgment can be enforced only
 against the joint property of all the said defendants, *naming them*,
 and the separate property of the said defendants, *naming them*, who
 were served as aforesaid, *and, if they are subject to arrest, and against*
 the persons of the said last named defendants.

If all the defendants have been served and some only of them
defend, and the others might have been sued without them, so that
the judgment is taken under the third subdivision of section 136, add
at the end of the form the following: This action being hereby
 severed, leaving the plaintiff to proceed hereafter against the
 other defendant, or, defendants, *naming them.*]

[In this case the judgment roll consists of the summons, complaint,
or copies thereof, the proof of service of the summons, affidavit that

¹ The caption will show that twenty days have since elapsed.

JUDGMENTS FOR THE PLAINTIFF.

no answer has been received, the clerk's report, if any, and a copy of the judgment. If an answer has been put in, and stricken out by the court, the answer and order to strike out should be inserted.]

No. 280.

ii. *When the action is upon contract, and the summons was served by publication.*

[TITLE.]

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for publication against the defendant [*or, defendants, naming them, and if the service has been made on different defendants on different days, specify the times of each*] having expired on the day of, 18..,¹ and due proof having been given to the court of such service, and that no answer [*or notice of appearance*] has been received from the defendant, [*or, from any of the defendants,*] and of the demand mentioned in the complaint, [*and the plaintiff having filed, as required, satisfactory security to abide the order of the court, touching the restitution, &c., as specified in the third subdivision of section 246;*] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [*or, defendants, naming them*] dollars, with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, complaint, or copies thereof, the order for publication, affidavit of the publication, affidavit that no answer has been received, and a copy of the judgment.]

No. 281.

iii. *When the action is not upon contract and the summons was personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of, 18.., by the personal service of the summons [*with a copy*

¹ The caption will show the lapse of 20 days, which must have elapsed after the publication.

JUDGMENTS FOR THE PLAINTIFF.

of the complaint] on the defendant, [or, defendants, *naming them*; and if the service has been made on different defendants on different days, *specify the times of each*,] and due proof having been made and filed of such service, and that no answer [or notice of appearance] has been received from the defendant, [or, from any of the defendants,] and the damages sustained by the plaintiff by reason of the matters alleged in the complaint, having been assessed by a referee appointed by the court, [or, by a jury under the direction of the court,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [or, defendants, *naming them*], dollars, the damages thus assessed, with dollars costs of the action, making together dollars.

[*In this case the judgment roll consists of the summons, complaint, or copies thereof, the proof of service of the summons, affidavit that no answer has been received, the order for assessment by a jury or by a referee, the certificate of assessment or referee's report, and a copy of the judgment.*]

No. 282.

iv. *When the action is not upon contract, and the summons was served by publication.*

[TITLE.]

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for publication against the defendant [or, defendants, *naming them*, and if the service has been made on different defendants on different days, *specify the times of each*] having expired on the . . . day of, 18.., and due proof having been given to the court of such service, and that no answer [or notice of appearance] has been received from the defendant, [or, from any of the defendants,] and the damages sustained by the plaintiff by reason of the matters alleged in the complaint, having been assessed by a referee appointed by the court, [or, by a jury under the direction of the court,] [and the plaintiff having filed, as re-

JUDGMENTS FOR THE PLAINTIFF.

quired, satisfactory security to abide the order of the court, touching the restitution, &c., as specified in the third subdivision of section 246], it is now, on motion of counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [or, defendants, naming them], dollars [the damages thus assessed], with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons and complaint, or copies thereof, the order for publication, affidavit of the publication, affidavit that no answer has been received, the order for assessment by a referee or by a jury, the referee's report or the certificate of assessment, and a copy of the judgment.]

Sec. 2. ON PARTIAL FAILURE TO ANSWER.

No. 283.

When the defendant's answer sets up only a counter-claim less than the claim of the plaintiff.

[TITLE.]

[CAPTION.]

The plaintiff having filed with the clerk a statement, admitting the counterclaim contained in the answer of the defendant [or, defendants, naming them], it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [or, defendants, naming them], dollars, being the excess of the plaintiff's claim over the said counter-claim, with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, the statement admitting the counter-claim, and a copy of the judgment.]

 JUDGMENTS FOR THE PLAINTIFF.

Sec. 3. ON TRIAL.

No. 284.

i. *Upon demurrer (under § 269).*

[TITLE.]

[CAPTION.]

This action having been brought to trial upon the issue of law arising upon the complaint and demurrer thereto [*or, complaint, answer and demurrer to the answer, or, complaint, answer, reply and demurrer to the reply*], and it appearing to the court that the plaintiff is entitled to judgment upon the said demurrer, it is now [on filing the clerk's report, &c., *or such other authority as is required under the second subdivision of section 246*], on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [*or, defendants naming them*] dollars, with dollars costs of the action, making together dollars.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, and a copy of the judgment. The practice sometimes adopted of inserting the order allowing or overruling the demurrer, with leave to amend, is irregular. That order has no place in the judgment roll.*]

No. 285.

ii. *Upon a verdict.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict therein rendered for the plaintiff, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [*or, defendants, naming them*], dollars, found by the jury, with dollars costs of the action, making together dollars.

JUDGMENTS FOR THE PLAINTIFF.

[The judgment roll in this case consists of the summons, pleadings, or copies thereof, the minutes of the trial, and a copy of the judgment.]

Neither the bill of costs nor any other paper than those above mentioned should be inserted in the roll, unless there be a case or exceptions, or some order made in the progress of the cause involving the merits and necessarily affecting the judgment.]

No. 286.

iii. *On trial of issues of fact by the court.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by the court, a trial by jury having been duly waived, and a decision therein rendered for the plaintiff, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [or, defendants, *naming them*] dollars, with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, the decision, and a copy of the judgment.]

No. 287.

iv. *On trial by referee.*

[TITLE.]

[CAPTION.]

This order having been referred by an order dated the day of, 18., to, of, to hear and decide all the issues therein, and the report of the said referee being filed, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover of the defendant [or, defendants, *naming them*] dollars, with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the order of reference, report, and a copy of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

TITLE II

JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR CHATTELS.

SECTION 1. On failure to answer.

2. On trial.

Sec. 1. ON FAILURE TO ANSWER.

No. 288.

i. *When the summons has been personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of
, 18.., by the personal service of the summons [with a copy
 of the complaint] on the defendant, [or, defendants, *naming them*,
and if the service has been made on different defendants on different
days, specify the times of each,] and due proof having been given
 to the court of such service, and that no answer [or notice of
 appearance] has been received from the defendant [or, from any of
 the defendants,] [and the property claimed having been taken
 into the plaintiff's possession,] [and the value of the property
 claimed, and damages for the detention thereof having been
 assessed by a jury, under the direction of the court,] it is now,
 on motion of , counsel for the plaintiff,
 adjudged that the plaintiff recover [or, retain] possession of the
 said property, [or dollars, the value thereof, in case a
 delivery cannot be had,] and also recover.... dollars [damages,
 with dollars] costs of the action.

[*In this case the judgment roll consists of the summons, complaint,
 proof of service of summons, affidavit that no answer has been re-
 ceived, (the order to assess the damages, the minutes of the assessment,) and a copy of the judgment.*]

JUDGMENTS FOR THE PLAINTIFF.

No. 289.

ii. *When the summons was served by publication.*

[TITLE.]

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for publication against the defendant [or, defendants, *naming them*, and if the service has been made on different defendants on different days, *specify the times of each*] having expired on the day of 18.., and due proof having been given to the court of such service, and that no answer [or notice of appearance] has been received from the defendant, [or, defendants, *naming them*,] and of the demand mentioned in the complaint, [and the plaintiff having filed, as required, satisfactory security to abide the order of the court, touching the restitution, &c., as specified in the third subdivision of section 246,] [and the property claimed having been taken into the plaintiff's possession,] [and the value of the property claimed, and damages for the detention thereof, having been assessed by a jury, under the direction of the court,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover [or, retain] possession of the said property, [or dollars, the value thereof, in case a delivery cannot be had,] and also recover dollars [damages, with dollars] costs of the action.

[*In this case the judgment roll consists of the summons, complaint, order of publication, affidavit of the publication, affidavit that no answer has been received, the order to assess the damages, the minutes of the assessment, and a copy of the judgment.*]

Sec. 2. ON TRIAL.

No. 290.

i. *Upon demurrer.*

[TITLE.]

[CAPTION.]

This action having been brought to trial upon the issue of law arising upon the complaint and demurrer thereto, [or, complaint,

JUDGMENTS FOR THE PLAINTIFF.

answer and demurrer to the answer, *or*, complaint, answer, reply and demurrer to the reply,] and it appearing to the court that the plaintiff is entitled to judgment upon the said demurrer, [and the property claimed having been taken into the plaintiff's possession,] [and the value of the property claimed, and damages for the detention thereof, having been assessed by a jury, under the direction of the court,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover [*or*, retain] possession of the said property, [*or* dollars, the value thereof, in case a delivery cannot be had,] and also recover dollars [damages, with dollars] costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, the order to assess the damages, the minutes of the assessment, and a copy of the judgment.]

No. 291.

ii. *Upon a verdict.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict rendered therein for the plaintiff, [and the property claimed having been taken into the plaintiff's possession,] [and the value of the property claimed, and damages for the detention thereof, having been assessed by a jury, under the direction of the court,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover [*or*, retain] possession of the said property, [*or*, dollars, the value thereof, in case a delivery cannot be had,] and also recover dollars [damages, with dollars] costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of the trial and of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

No. 292.

iii. *On trial by the court.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by the court, a trial by jury having been duly waived, and a decision therein having been rendered for the plaintiff, [and the property claimed having been taken into the plaintiff's possession,] [and the value of the property claimed, and damages for the detention thereof having been found by the court,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover [or, retain] possession of the said property, [or dollars, the value thereof, in case a delivery cannot be had,] and also recover dollars [damages, with dollars] costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, the decision, and a copy of the judgment.]

No. 293.

iv. *On a trial by referee.*

[TITLE.]

[CAPTION.]

This action having been referred, by an order dated the day of, to, of, to hear and decide all the issues therein, and the report of the said referee being filed, [and the property claimed having been taken into the plaintiff's possession,] and damages for the detention thereof having been found by the said referee, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover [or retain] possession of the said property [or, dollars, the value thereof, in case a delivery cannot be had,] and also recover dollars [damages, with dollars] costs of the action.

[In this action the judgment roll consists of the summons, pleadings, a copy of the order of reference, the report, and a copy of the judgment.]

 JUDGMENTS FOR THE PLAINTIFF.

TITLE III

JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR LAND.

- SECTION 1. On failure to answer.
2. On trial.

Sec. 1. ON FAILURE TO ANSWER.

No. 294.

- i.
- When the summons has been personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of, 18.., by the personal service of the summons [with a copy of the complaint] on the defendant, [or, defendants, naming them, and if the service has been made on different defendants, on different days, specify the times of each,] and due proof having been given to the court of such service, and that no answer [or notice of appearance] has been received from the defendant, [or, defendants, naming them,] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, with dollars costs of the action.

[In this case the judgment roll consists of the summons and complaint, or copies thereof, proof of service of summons, affidavit that no answer has been received, and a copy of the judgment.]

No. 295.

- ii.
- When the summons was served by publication.*

[TITLE.]

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for

JUDGMENTS FOR THE PLAINTIFF.

publication against the defendant [*or, defendants, naming them, and if the service has been made on different defendants on different days, specify the times of each*] having expired on the day of, 18.., and due proof having been given to the court of such service, and that no answer [*or notice of appearance*] has been received from the defendant, [*or from any of the defendants,*] and also of the demand mentioned in the complaint, [*and the plaintiff having filed, as required, satisfactory security to abide the order of the court, touching the restitution, &c., as specified in the third subdivision of section 246,*] it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, with dollars costs of the action.

[In this case the judgment roll consists of the summons and complaint, or copies thereof, the order for publication, affidavit of publication, affidavit that no answer has been received, and a copy of the judgment.]

No. 296.

iii. *When damages are recovered.*

[As in either No. 294, or No. 295, to, but not including the words "it is now;" and continue:] and damages for the withholding thereof, having been assessed by a jury, under the direction of the court, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, and also dollars damages, with dollars costs of the action.

[The order for and minutes of assessment must be added to the judgment roll.]

JUDGMENTS FOR THE PLAINTIFF.

Sec. 2. ON TRIAL.

No. 297. .

i. *On demurrer.*

[TITLE.]

[CAPTION.]

This action having been brought to trial upon the issue of law arising upon the complaint and demurrer thereto, [*or, complaint, answer and demurrer thereto, or, complaint, answer, reply and demurrer thereto,*] and it appearing to the court that the plaintiff is entitled to judgment upon the said demurrer, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, with dollars costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, and a copy of the judgment.]

[If damages are assessed, modify according to No. 296.]

No. 298.

ii. *Upon a verdict.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict therein rendered for the plaintiff, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, [and also dollars damages for the withholding thereof,] [and also dollars for the rents and profits thereof,] with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of the trial, and a copy of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

No. 299.

iii. *On trial by the court.*

[TITLE.]

[CAPTION.]

This action having been brought to trial by the court, a trial by jury having been duly waived, and a decision therein having been rendered for the plaintiff, it is now, on motion of
, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, [and also dollars damages for the withholding thereof,] [and also dollars for the rents and profits thereof,] with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, and a copy of the judgment.]

No. 300.

iv. *On trial by referee.*

[TITLE.]

[CAPTION.]

This action having been referred, by an order dated the day of, to, of, to hear and decide all the issues therein, and the report of the said referee being filed, it is now, on motion of, counsel for the plaintiff, adjudged that the plaintiff recover possession of the real property described in the complaint, [and also dollars damages for the withholding thereof,] [and also dollars for the rents and profits thereof,] with dollars costs of the action, making together dollars.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the order of reference, the report, and a copy of the judgment.]

 JUDGMENTS FOR THE PLAINTIFF.

TITLE IV.

JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR SPECIAL RELIEF.

SECTION 1. On failure to answer.

2. On trial.

Sec. 1. ON FAILURE TO ANSWER.

No. 301.

i. *When the summons has been personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of
, 18.., by the personal service of the summons [with a copy
 of the complaint] on the defendant [*or, defendants, naming them,*
and if the service has been made on different defendants, on different
days, specify the times of each], and due proof having been given
 to the court of such service, and that no answer [or notice of ap-
 pearance], has been received, it is now, on motion of
, counsel for the plaintiff, [*and if notice of appearance has*
been served: after hearing counsel for the defendant, or, and on
proof of due service on the defendant's attorney of notice of
application for this judgment], adjudged that the defendant [*or,*
defendants, naming them], forthwith execute and deliver to the
 plaintiff a conveyance, with full covenants, to be approved by
 a justice of this court, of the real property described in the com-
 plaint, and that the plaintiff also recover of the defendant [*or,*
defendants, naming them], dollars, costs of the action
 [*or, whatever may be the special relief granted, with or without costs.*]

[*In this case the judgment roll consists of the summons and complaint,*
or copies thereof, proof of service of summons, affidavit that no answer
has been received, and a copy of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

No. 302.

ii. *When the summons was served by publication.*

[TITLE.]

•

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for publication against the defendant [or, defendants, *naming them*, and if the service has been made on different defendants, on different days, *specify the times of each*], having expired on the day of, 18.., and due proof having been given to the court of such service, and that no answer [or notice of appearance], has been received from the defendant, [or, defendants, *naming them*], and also of the demand mentioned in the complaint [and the plaintiff having filed, as required, satisfactory security to abide the order of the court touching the restitution, &c., as prescribed in the third subdivision of section 246], it is now, on motion of, counsel for the plaintiff [after hearing counsel for the defendant, or, and on proof of due service on the defendant's attorney of notice of application for this judgment], adjudged that the defendant [or, defendants, *naming them*], forthwith execute and deliver to the plaintiff a conveyance, with full covenants, to be approved by a justice of this court, of the real property described in the complaint, and that the plaintiff also recover of the defendant [or, defendants, *naming them*], dollars costs of the action [or, *whatever may be the special relief granted, with or without costs.*]

[In this case the judgment roll consists of the summons and complaint, or copies thereof, affidavit of publication, affidavit that no answer has been received, and a copy of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

Sec. 2. ON TRIAL.

No. 303.

i. *On demurrer, under complaint No. 153.*

[TITLE.]

[CAPTION.]

This action having been brought to trial upon the complaint and demurrer thereto, [*or, complaint, answer and demurrer thereto, or, complaint, answer, reply and demurrer thereto,*] and it appearing to the court that the plaintiff is entitled to judgment upon the said demurrer, it is now, on motion of
, counsel for the plaintiff, adjudged :

1. That the conveyance [*describing it*] dated the day of, 18.., executed by, to, was made with intent to defraud the creditors of the said
, and is void as against the plaintiff in this action ;

2. That the property therein [*or, in the complaint*] described be sold by the sheriff [*&c., as in foreclosure cases ;*]

3. That the sheriff pay to the plaintiff the net proceeds of such sale, or so much thereof as will satisfy the amount of the judgment described in the complaint, being for dollars, with interest from the day of, 18.., and dollars costs of this action ;

4. That if there be any surplus remaining after such payment, the sheriff pay the same to the defendant or his attorney.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, and a copy of the judgment.*]

JUDGMENTS FOR THE PLAINTIFF.

No. 304.

ii. *On a verdict, under complaint No. 141.*

[TITLE.]

[CAPTION.]

This action having been brought by order of the court to a trial by jury, and a verdict therein rendered for the plaintiff, it is now, on motion of, counsel for the plaintiff, adjudged:

1. That the contract set forth in the complaint was made under a mistake of material facts on the part of the plaintiff, and is therefore voidable by him;

2. That the defendant surrender the same to be canceled.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of the trial, and a copy of the judgment.*]

No. 305.

iii. *On a trial of issues of fact by the court, under complaint No. 152.*

[TITLE.]

[CAPTION.]

This action having been brought to trial by the court, and a decision therein rendered for the plaintiff, it is now, on motion of , counsel for the plaintiff, adjudged that the defendant [*or, defendants, naming them*] forthwith deliver to the plaintiff [*describe the property,*] and that the plaintiff also recover of the defendant [*or, defendants, naming them*] dollars costs of the action.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, the decision, and a copy of the judgment.*]

No. 306.

iv. *The like, under complaint No. 165.*

[TITLE.]

[CAPTION.]

[Commencement as in preceding form:]

1. That the plaintiff recover of the defendants dollars, being the amount of the note made by the defendant, and indorsed by the defendant, with interest thereon, and also dollars costs of the action, making together dollars;

2. That upon the return of an execution against the defendants, unsatisfied in whole or in part, the plaintiff will be entitled to so much of the proceeds of the six notes lodged with the said Brown, as security for his said indorsement, as will be sufficient to satisfy the same;

3. That R. W. H. be appointed receiver of the said six notes or of the proceeds thereof; that before entering upon the execution of his trust, he execute and file, in the proper office, a bond, with sufficient sureties, in the penal sum of \$....., to be approved by a justice of this court, conditioned for the performance of his trust, and shall thereupon be vested with all the rights and powers of his office;

4. That the said Brown transfer to the said receiver, the said six notes or such of them as remain, and the proceeds of such of them as have been paid;

5. That the said receiver collect, as far as practicable, the notes remaining unpaid, and apply the money received by him as aforesaid, after deducting his commissions, to the satisfaction of the judgment aforesaid;

6. That if there be any surplus remaining thereafter, the same be paid to the defendant Jones.

[Judgment roll as before.]

JUDGMENTS FOR THE PLAINTIFF.

No. 307.

v. *On a trial by referee.*

[TITLE.]

[CAPTION.]

This action having been referred, by an order, dated the day of, to of, to hear and decide all the issues therein, and the report of the said referee being filed, it is now, on motion of, counsel for the plaintiff, adjudged that the defendant [*or, defendants, naming them*] forthwith execute and deliver to the plaintiff a conveyance, with full covenants, to be approved by a justice of this court, of the real property described in the complaint, and that the plaintiff also recover of the defendant [*or, defendants, naming them*] dollars costs of the action [*or whatever may be the special relief granted, with or without costs.*]

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, order of reference, report, and a copy of the judgment.*]

JUDGMENTS FOR THE DEFENDANT.

CHAPTER II.

JUDGMENTS FOR THE DEFENDANT.

- SECTION 1. Judgment without trial.
2. Judgment upon trial.

Sec. 1. JUDGMENT WITHOUT TRIAL.

No. 308.

Dismissal of the complaint for want of service.

[TITLE.]

[CAPTION.]

This action having been commenced by the service of the summons, without a copy of the complaint, on the defendant, [or, defendants, naming those in whose favor the dismissal is taken,] and the said defendant [or, the said defendants,] having, on the day of, 18.., served on the plaintiff's attorney a notice of appearance, and demanded a copy of the complaint, and due proof having been given to the court of such notice and demand, and that no copy of the complaint has been served, it is now, on motion of, counsel for the defendant, [or, the said defendants,] adjudged that the complaint be dismissed for want of service of a copy thereof, and that the defendant [or, the said defendants,] recover of the plaintiff dollars costs of the action.

[In this case the judgment roll consists of copies of the summons, notice of appearance and demand of copy of the complaint, affidavit that no copy of the complaint has been served, and a copy of the judgment.]

JUDGMENTS FOR THE DEFENDANT.

Sec. 2. JUDGMENT UPON TRIAL.

No. 309.

i. *Dismissal of the complaint upon the merits after demurrer.*

[TITLE.]

[CAPTION.]

This action having been brought to trial upon the complaint and demurrer thereto [or, complaint, answer and demurrer thereto, or, complaint, answer, reply and demurrer thereto], and it appearing to the court that the defendant [or, defendants, naming them] is [or, are] entitled to judgment upon the said demurrer, it is now, on motion of, counsel for the defendant, adjudged that the complaint be dismissed, upon the merits thereof, and that the defendant [or, the said defendants,] recover of the plaintiff dollars costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, and a copy of the judgment.]

No. 310.

ii. *Dismissal of the complaint after a verdict.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict having been found for the defendant [or, defendants, naming them], it is now, on motion of, counsel for defendant, adjudged that the complaint be dismissed upon the merits of the action, and that the defendant [or, the said defendants,] recover of the plaintiff dollars costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of the trial, and a copy of the judgment.]

JUDGMENTS FOR THE DEFENDANT.

No. 311.

iii. *Dismissal of the complaint on a trial of issues of fact by the court.*

[TITLE.]

[CAPTION.]

This action having been brought to trial by the court, [a trial by jury being duly waived,] and a decision therein rendered for the defendant [or, defendants, *naming them*], it is now, on motion of, counsel for defendant, adjudged that the complaint be dismissed upon the merits of the action, and that the defendant [or, defendants, *naming them*] recover of the plaintiff dollars costs of the action.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, the decision, and a copy of the judgment.*]

No. 312.

iv. *Dismissal of the complaint on a trial by referee.*

[TITLE.]

[CAPTION.]

This action having been referred, by an order dated the day of, 18.., to, of, to hear and decide all the issues therein, and the report of the referee in favor of the defendant [or, defendants, *naming them*] being filed, it is now, on motion of, counsel for defendants, adjudged that the complaint be dismissed upon the merits of the action, and that the defendant [or, defendants, *naming them*] recover of the plaintiff dollars costs of the action.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the order of reference, the report, and a copy of the judgment.*]

 JUDGMENTS FOR SOME OF THE PARTIES.

CHAPTER III.

JUDGMENTS FOR SOME OF THE PARTIES ON EACH SIDE.

No. 313.

i. *Judgment in favor of some of the plaintiffs against all the defendants (under § 274).*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict having been rendered in favor of the plaintiffs, [A. B. and C. D., *naming them*] against all the defendants, and in favor of the said defendants against the plaintiff, E. F., it is now, on motion of, counsel for the plaintiffs, adjudged that the said plaintiffs, A. B. and C. D., recover of all the defendants dollars found by the jury, with dollars costs of the action, making together dollars.

And it is further adjudged that as to the plaintiff, E. F., the complaint be dismissed upon the merits of the action, and that the defendants recover of the said E. F. dollars costs of the action.

[*In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of trial, and a copy of the judgment.*]

No. 314.

ii. *Judgment in favor of all the plaintiffs against some of the defendants.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict having been rendered in favor of all the plaintiffs against the defendants, [A. B. and C. D., *naming them*] and in favor of the defendant, E. F., against all the plaintiffs, it is now, on motion of, counsel for the plaintiffs, adjudged that

JUDGMENTS FOR SOME OF THE PARTIES.

the said plaintiffs recover of the defendants, [A. B. and C. D., *naming them*] dollars, found by the jury, with dollars costs of action, making together dollars.

And it is further adjudged that the complaint be dismissed on the merits of the action, as against the defendant, E. F., and that he recover of all the plaintiffs dollars costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of trial, and a copy of the judgment.]

No. 315.

iii. *Judgment in favor of some of the plaintiffs, against some of the defendants.*

[TITLE.]

[CAPTION.]

This action having been brought to a trial by jury, and a verdict having been rendered in favor of the plaintiffs, [A. B. and C. D., *naming them*] against the defendants, [E. F. and G. H., *naming them*] and against the plaintiff, [J. K.,] in favor of all the defendants, and in favor of the defendant, [L. M.,] against all the plaintiffs, it is now, on motion of, counsel for the plaintiffs, adjudged that the said plaintiffs, A. B. and C. D., recover of the defendants, E. F. and G. H.,, dollars, found by the jury, with dollars costs of the action, making together dollars.

And it is further adjudged that as to the plaintiff, J. K., the complaint be dismissed upon the merits of the action, as against all the defendants, and that they recover of the said J. K. dollars costs of the action.

And it is further adjudged that the complaint be dismissed on the merits of the action, as against the defendant, L. M., and that he recover of all the plaintiffs dollars costs of the action.

[In this case the judgment roll consists of the summons, pleadings, or copies thereof, a copy of the minutes of the trial, and a copy of the judgment.]

JUDGMENTS ON APPEAL

CHAPTER IV.

JUDGMENTS ON APPEAL.

No. 316.

Judgment of affirmance at the general term.

[TITLE.]

[CAPTION.]

The appeal from the judgment entered in this action on the day of, 18.., having been brought to the general term, it is now, on motion of, counsel for respondent, after hearing, counsel for appellant, adjudged that the said judgment be affirmed, and that the respondent recover of the appellant, costs of the appeal.¹

No. 317.

Judgment upon a record remitted from the court of appeals.

[TITLE.]

[CAPTION.]

An appeal from the judgment entered in this action on the day of, 18.., having been taken to the court of appeals, and the record remitted from that court being filed, it is now on motion of, counsel for, adjudged that [*follow the judgment of the court of appeals.*]

¹ It is sometimes the practice to repeat the judgment appealed from in the judgment of affirmance, adding the amount of the first judgment to the costs of affirmance. This is irregular and embarrassing, as it makes the docket of judgments against the appellant larger than the amount he owes.

 JUDGMENTS FOR THE PLAINTIFF.

TITLE IV.

JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR SPECIAL RELIEF.

SECTION 1. On failure to answer.

2. On trial.

Sec. 1. ON FAILURE TO ANSWER.

No. 301.

i. *When the summons has been personally served.*

[TITLE.]

[CAPTION.]

This action having been commenced on the day of
, 18.., by the personal service of the summons [with a copy
 of the complaint] on the defendant [*or, defendants, naming them,*
and if the service has been made on different defendants, on different
days, specify the times of each], and due proof having been given
 to the court of such service, and that no answer [or notice of ap-
 pearance], has been received, it is now, on motion of
, counsel for the plaintiff, [*and if notice of appearance has*
been served: after hearing counsel for the defendant, or, and on
 proof of due service on the defendant's attorney of notice of
 application for this judgment], adjudged that the defendant [*or,*
defendants, naming them], forthwith execute and deliver to the
 plaintiff a conveyance, with full covenants, to be approved by
 a justice of this court, of the real property described in the com-
 plaint, and that the plaintiff also recover of the defendant [*or,*
defendants, naming them], dollars, costs of the action
 [*or, whatever may be the special relief granted, with or without costs.*]

[*In this case the judgment roll consists of the summons and complaint,*
or copies thereof, proof of service of summons, affidavit that no answer
has been received, and a copy of the judgment.]

JUDGMENTS FOR THE PLAINTIFF.

No. 302.

ii. *When the summons was served by publication.*

[TITLE.]

•

[CAPTION.]

The summons in this action having been ordered to be served by publication, and the time prescribed by the order for publication against the defendant [*or, defendants, naming them, and if the service has been made on different defendants, on different days, specify the times of each*], having expired on the day of, 18.., and due proof having been given to the court of such service, and that no answer [*or notice of appearance*], has been received from the defendant, [*or, defendants, naming them*], and also of the demand mentioned in the complaint [*and the plaintiff having filed, as required, satisfactory security to abide the order of the court touching the restitution, &c., as prescribed in the third subdivision of section 246*], it is now, on motion of, counsel for the plaintiff [*after hearing counsel for the defendant, or, and on proof of due service on the defendant's attorney of notice of application for this judgment*], adjudged that the defendant [*or, defendants, naming them*], forthwith execute and deliver to the plaintiff a conveyance, with full covenants, to be approved by a justice of this court, of the real property described in the complaint, and that the plaintiff also recover of the defendant [*or, defendants, naming them*], dollars costs of the action [*or, whatever may be the special relief granted, with or without costs.*]

[In this case the judgment roll consists of the summons and complaint, or copies thereof, affidavit of publication, affidavit that no answer has been received, and a copy of the judgment.]

EXECUTION.

ants, in favor of the plaintiff [*or, defendants*] against the defendants [*or, plaintiff*] for dollars, as appears by the judgment roll, filed in the office of the clerk of the county of

AND WHEREAS, the said judgment was docketed in your county on the day of, 18.., and the sum of dollars, with interest from the day of 18.., is now due thereon :

THEREFORE WE COMMAND YOU, that you satisfy the said judgment out of the personal property of the said judgment debtors within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtors on the day when the said judgment was docketed in your county, or at any time thereafter, in whose hands soever the same may be, and return this execution, within sixty days after its receipt by you, to the clerk of the county of

Dated, the day of, one thousand eight hundred and

G. H.,

Attorney for [Plaintiff].

No. 319.

ii. *Against the joint property of all, and the individual property of some of the defendants (under § 136.)*

[*As in No. 318, to the words "due thereon," and continue.*]

THEREFORE WE COMMAND YOU, that you satisfy the said judgment out of the joint personal property of all the defendants, and the separate personal property of the said E. F. [*naming the defendants served*] within your county; or, if sufficient personal property cannot be found, then out of the real property belonging jointly to all the defendants, or separately to the said E. F., within your county, on the day when the said judgment was docketed [*&c., as in No. 318, to the end.*]

EXECUTION.

No. 320.

iii. *Against property in the hands of a trustee.*

[As in No. 318, to the words "due thereon," describing the judgment debtor, "as executor," "as heir," or otherwise, and continue.]

THEREFORE WE COMMAND YOU, that you satisfy the said judgment out of the personal property in the hands of the said, as executor, [or, as trustee of
....., or otherwise, &c.]

No. 321.

iv. *Indorsement on execution where it is necessary.*

[TITLE.]

Levy \$, with interest from the [date of entering judgment,] besides your fees.

G. H.,

[Date.]

[Plaintiff's] Attorney.

TO THE SHERIFF OF THE COUNTY OF

No. 322.

v. *Indorsement where an installment is due (under § 384.)*

[TITLE.]

Levy \$, with interest thereon from the day of, 18.., being the amount now due on the judgment within mentioned, and also \$, costs thereof, with interest thereon from the day of, 18.., besides your fees.

G. H.,

[Date.]

Plaintiff's Attorney.

TO THE SHERIFF OF THE COUNTY OF

EXECUTION.

No. 323.

vi. *Indorsement where the judgment is for a debt secured by mortgage.*

[TITLE.]

Levy \$., with interest from the day of, 18.., besides your fees; but not on any part of [*describing the property,*] being the premises mortgaged by the defendant to, by mortgage, dated the day of, 18.., and recorded in the office of the of the county of, in liber of mortgages, page, for securing the debt for which the judgment herein was rendered.

G. H.,

Plaintiff's Attorney.

TO THE SHERIFF OF THE COUNTY OF

No. 324.

vii. *Execution against the person.*

The People of the State of New York,

TO THE SHERIFF OF THE COUNTY OF

WHEREAS, judgment was rendered on the day of, 18.., in an action in the court of, between, plaintiff, and, defendant, in favor of the, against the, for dollars, as appears by the judgment roll, filed in the office of the clerk of the county of ;

AND WHEREAS, the said judgment was docketed in your county on the day of, 18.., and the sum of dollars with interest from the day of, 18.., is now due thereon;

AND WHEREAS, an execution against the property of the said has been duly issued to the sheriff of the county of [*or, to you*] and returned unsatisfied;

EXECUTION.

THEREFORE WE COMMAND YOU, that you arrest the said,, and commit him [or, them] to the jail of your county until he [or, they] shall pay the said judgment, or be discharged according to law.

Dated, the day of, one thousand eight hundred and sixty

G. H.,
[Plaintiff's] Attorney.

Sec. 2. EXECUTIONS FOR SPECIFIC PROPERTY.

No. 325.

i. For chattels.

The People of the State of New York,

TO THE SHERIFF OF THE COUNTY OF

WHEREAS, judgment was rendered on the day of
....., 18.., in an action in the court, between
....., plaintiff, and, defendant, in
favor of the, against the,
for the possession of the following described personal property,
viz: [*describe the same particularly*] or if a delivery thereof
cannot be had then for dollars, the value thereof, duly
assessed, and also for [*state the nature of the judgment and the sums
recovered for damages and for costs in accordance with the judgment*]
as appears by the judgment roll, filed in the office of the clerk of
the county of

AND WHEREAS, the said judgment was docketed in your
county on the day of, 18.., and the sum
of dollars with interest from the day of
....., 18.., is now due thereon; [and dollars addi-
tional, with interest as aforesaid, in case the property is not
delivered:]

THEREFORE WE COMMAND YOU, that you deliver the said
property to the said; and that you satisfy the said
sum of dollars, [*damages and costs*], with interest as

EXECUTION.

aforesaid, and, also, in case a delivery of the said property cannot be had, the further sum of dollars, with interest as aforesaid, out of the personal property of the said judgment debtor within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtor on the day when the said judgment was docketed in your county, or at any time thereafter, in whose hands soever the same may be; and return this execution, within sixty days after its receipt by you, to the clerk of the county of

Dated, [*etc.*, as in No. 324.]

No. 326.

ii. *For lands.*

The People of the State of New York,

TO THE SHERIFF OF THE COUNTY OF

WHEREAS, judgment was rendered on the day of
, 18.., in an action in the court, between
, plaintiff, and, defendant, in
 favor of the, against the,
 for the possession of the following described real property,
viz.: [*describe the same particularly,*] and also for [*state the*
nature of judgment and the sums recovered for rents and profits,
and for costs, in accordance with the judgment,] as appears by the
 judgment roll filed in the office of the clerk of the county
 of

AND WHEREAS, the said judgment was docketed in your
 county on the day of, 18.., and the sum of
 dollars is now actually due thereon;

THEREFORE WE COMMAND YOU, that you deliver possession
 of the said real property to the said; and
 that you satisfy the said sum of dollars, out of the
 personal property of the said judgment debtor within your

EXECUTION.

county ; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtor on the day when the said judgment was docketed in your county, or at any time thereafter, in whose hands soever the same may be ; and return this execution, within sixty days after its receipt by you, to the clerk of the county of

Dated, [*etc., as in No. 324.*]

SUPPLEMENTARY PROCEEDINGS.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

- SECTION 1. Against the judgment debtor.
2. Against third persons.

Sec. 1. PROCEEDINGS AGAINST THE JUDGMENT DEBTOR.

No. 327.

i. Affidavit of return of execution unsatisfied.

[TITLE.]

COUNTY OF: John Smith, of, the
[plaintiff,] [or, the attorney for the plaintiff,] being duly sworn,
says as follows:

1. Judgment was rendered in favor of the [plaintiff] against the
above named John Jones, in the court, on the day
of, 18.., for dollars;

2. The judgment roll in this action has been filed with the
clerk of the county of

[3. The said judgment has been docketed in this county;]

4. An execution was duly issued thereon on the day of
....., 18.., against the property of the said Jones, to the
sheriff of the county of, which has been returned
[wholly] unsatisfied;

5. The said Jones resided, [or, had a place of business,] when
the same was issued, at, in this county. [Or, 5,
The said Jones does not reside in this state.]

JOHN SMITH.

Sworn, &c.

 SUPPLEMENTARY PROCEEDINGS.

No. 328.

ii. *Order to attend examination (under § 291.)*

[TITLE.]

It appearing to the undersigned, by affidavit, that a judgment has been rendered in the court, in favor of the above named [plaintiff,] against the above named [defendant,] for dollars; that the judgment roll has been filed in the office of the clerk of the county of ; and that an execution has been duly issued to the sheriff of the said county, and returned by him unsatisfied: Therefore, in the name of

The People of the State of New York:

YOU,, ARE COMMANDED to appear before, at the, in the of, on the day of, 18.., at o'clock in the ... noon, to make discovery concerning your property [*or, concerning the property held by you as executor of, &c.*]

AND YOU ARE FURTHER COMMANDED not to dispose of, or in any manner interfere with any of your property [*or, any of the property held by you as aforesaid*] not exempt from execution, until after your examination as aforesaid.

[Date.]

[Judge's signature.]

No. 329.

iii. *Order to surrender property (under §§ 291, 296.)*

[TITLE.]

On the affidavit of John Smith, dated the day of, 18.., and the examination of the above named John Jones, taken before me, whereby it appears that an execution has been duly issued in this action [and returned unsatisfied,] and that the said Jones has in his possession the following property, which

 SUPPLEMENTARY PROCEEDINGS.

ought to be applied to the satisfaction of the same, [*describing it,*]
it is now, on motion of counsel for

ORDERED: That the said Jones forthwith deliver the said property [*or, pay the said money*] to the above named [*name of judgment creditor,*] to be applied to the satisfaction of the judgment herein.

[*Date.*]

[*Judge's signature.*]

No. 330.

iv. *Order appointing receiver.*

[**TITLE.**]

The above named John Jones having been examined before me, in proceedings supplementary to execution, on motion of , counsel for

ORDERED: 1. That C. D., of, [counselor at law,] be appointed receiver of all the property of the said judgment debtor, not exempt from execution;

2. That the said receiver execute to [the clerk of this court] a bond, with [two] sufficient sureties, to be approved by a justice of this court, in the penalty of dollars, for the faithful performance of his trust, and file the same with the clerk of the

3. That the said receiver be invested with the usual rights and powers of receivers in such cases, upon the filing of the said bond;

4. That the said judgment debtor deliver to the said receiver all money and other property now in his possession, except property exempt from execution, [and excepting also his earnings during the sixty days preceding the date hereof.]

[*Date.*]

[*Judge's signature.*]

SUPPLEMENTARY PROCEEDINGS.

Sec. 2. PROCEEDINGS AGAINST THIRD PERSONS.

No. 331.

i. *Affidavit of the indebtedness of a third person to the judgment debtor.*

[TITLE.]

COUNTY OF: A. B., of, being duly sworn, says as follows:

1. Judgment was rendered in this action, in the court, on the day of, 18.., in favor of the, against the, for dollars;

2. An execution was duly issued thereon against the property of the said [name of the judgment debtor to whom the third person is indebted,] to the sheriff of the county of [where the third person resides;]

3. Benjamin Brown, of, has in his possession, as I am informed and believe, property belonging to the said judgment debtor.

[Or, 3. B. B., of, is, as I am informed and believe, indebted to the said judgment debtor in an amount exceeding ten dollars.]

Sworn, &c.

A. B.

No. 332.

ii. *Order to attend examination.*

[TITLE.]

It appearing to the undersigned by affidavit, that an execution has been issued against the above named [name of judgment debtor,] and that you are indebted to him in a sum exceeding ten dollars [or, that you have property belonging to him:]

Therefore, in the name of

The People of the State of New York:

YOU,, ARE COMMANDED to appear before, at the, in the of, on the

 SUPPLEMENTARY PROCEEDINGS.

.... day of, 18.., at o'clock in thenoon, to be examined concerning the premises.

[*Judge's signature.*]

[*Date.*]

No. 333.

iii. *Order to pay debt or surrender property.*

[TITLE.]

On the affidavit of, dated the day of, 18.., and the examination of Benjamin Brown, whereby it appears that the said Brown has certain property of the above named John Jones, the judgment debtor herein, to wit: [or, that the said Brown is indebted to the above named John Jones, the judgment debtor herein, in the sum of dollars]; and on motion of, counsel for,

ORDERED: That the said Brown pay [or, deliver] to the above named [*name of judgment creditor*] the said money [or, property] to be applied to the satisfaction of the judgment herein.

[*Judge's signature.*]

[*Date.*]

PART VII.

APPEALS.

CHAPTER I. NOTICE OF APPEAL.

II. UNDERTAKING ON APPEAL.

III. ORDER STAYING PROCEEDINGS.

CHAPTER I.

NOTICE OF APPEAL.

No. 334.

i. *Notice of appeal to the court of appeals.*

[TITLE.]

Please take notice, that the plaintiff [*or, defendant*] appeals to the court of appeals from the judgment [*or, order*] entered herein, at the general term of the court, on the day of, 18.., [*affirming*] the judgment [*or, order*] of the [*special term*], entered on the day of, 18..
[*or specify the parts appealed from*].

[*Date.*]

Yours, &c.,

A. B.,

Attorney for

To C. D., *Esq.*, *Attorney for*

To E. F., *Esq.*, *Clerk of*

APPEALS.

No. 335.

ii. *Notice of appeal to the general term, from a judgment.*

[TITLE.]

Please take notice that the appeals to the general term, from the judgment entered herein on the day of 18..; [*or specify the parts appealed from.*]

[*Date, address and signature.*]

No. 336.

iii. *Notice of appeal to the general term, from an order.*

[TITLE.]

Please take notice that the appeals to the general term, from the order entered [*&c., as in the preceding form.*].

No. 337.

iv. *Notice of appeal from a justice's judgment.*

COUNTY OF: In justice's court, before, Esq.,
justice of the peace of the town of

JOHN SMITH
against
JOHN JONES.

Please take notice that the appeals to the court of from the judgment given herein on the day of, 18.., for dollars damages and costs, upon the following grounds:

1.
2.
3.

[*Date.*]

Yours, &c.,

JOHN JONES,
Appellant.

To , *Esq., Justice.*
To JOHN SMITH, *Esq., Respondent.*

 APPEALS.

CHAPTER II.

UNDERTAKING ON APPEAL.

- SECTION 1. On appeals to the general term or court of appeals.
 2. On appeals to a county court.

Sec. 1. ON APPEAL TO THE GENERAL TERM OR COURT OF
 APPEALS.

No. 338.

- i. *For costs on appeal to the court of appeals (under § 334).*

SUPREME COURT.

JOHN SMITH
against
 JOHN JONES.

}

WHEREAS, on the day of, 18.., the [plain-
 tiff] recovered judgment against the [defendant], in the
, for

AND WHEREAS, the [defendant] intends to appeal therefrom
 to the court of appeals;

Now, THEREFORE, we, Benjamin Brown, of [mer-
 chant], and Daniel Down, of [tailor], undertake
 in the sum of two hundred and fifty dollars, that the said [de-
 fendant] shall pay all costs and damages that may be awarded
 against him on such appeal.

[Signatures.]

[Justification and acknowledgment as in No. 238.]

APPEALS.

No. 339.

ii *To stay proceedings on a judgment for money (under § 335).*

[TITLE.]

WHEREAS, on the day of, 18.., the
..... recovered judgment against the, in the
....., for dollars;

AND WHEREAS, the intends to appeal therefrom
to the, and desires to stay all proceedings
thereon;

NOW, THEREFORE, we, Benjamin Brown, of [mer-
chant], and Daniel Down, of [tailor], undertake
in the sum of two hundred and fifty dollars, that the said
..... shall pay all costs and damages that may be awarded
against him on such appeal; and also in the further sum of ...
..... dollars, that if the said judgment, or any part thereof,
be affirmed, the said shall pay such amount as
shall be so awarded, and all damages awarded against him on
such appeal.

[Signatures.]

[Justification and acknowledgment as in No. 238.]

No. 340.

iii. *To stay proceedings on a judgment for chattels (under § 336).*

[TITLE.]

WHEREAS, on the day of, 18.., the
..... recovered judgment against the, in the
....., for the possession of

AND WHEREAS, the intends to appeal there-
from to the, and desires to stay proceedings
thereon;

NOW, THEREFORE, we,, of,
and, of, undertake, in the

APPEALS.

sum of two hundred and fifty dollars, that the said
 shall pay all costs and damages that may be awarded against ...
 on such appeal; and also in the further sum of
 dollars, that the said shall obey the judgment
 rendered on such appeal.

[Signatures.]

[Justification and acknowledgment as in No. 238.]

No. 341.

iv. *To stay proceedings on a judgment for lands.*

[TITLE.]

[As in No. 339 to the words "in the further sum of
 dollars," and continue:] that during the possession of the said
 property by the said, he will not commit nor
 permit any waste thereon; and in the further sum of
 dollars, that if the said judgment be affirmed, he shall pay the
 value of the use and occupation of the said property, from the
 time of this appeal until the delivery of the possession thereof
 [If damages have been awarded, or judgment has been rendered for a
 deficiency on a mortgage, add:] and also in the further sum of ..
 dollars, that if the said judgment, or any part thereof,
 be affirmed, the said shall pay such amount as
 shall be so awarded, and all damages awarded against
 on such appeal.

[Signatures.]

[Justification and acknowledgment as in No. 238.]

 APPEALS.

No. 342.

vi. *To stay proceedings on a justice's judgment (under §§ 355, 356.)*

[TITLE.]

WHEREAS, on the day of, 18.., judgment was rendered in this action, against the, for dollars;

AND WHEREAS, the said intends to appeal therefrom to the court of, and desires to stay proceedings thereon;

NOW THEREFORE, we,, of, and, of, of, undertake, that if judgment be rendered against the said, on such appeal, and execution thereon be returned unsatisfied, in whole or in part, we will pay the amount unsatisfied.

[Signatures.]

[Justification before a judge.]

APPEALS.

CHAPTER III.

ORDERS STAYING PROCEEDINGS.

No. 343.

Order to stay proceedings pending appeal (under §§ 339, 348).¹

[TITLE.]

[CAPTION.]

The having appealed to the, from
the, on motion of,
counsel for, after hearing,
counsel for ;

ORDERED : That all proceedings on the judgment [*or*, order]
appealed from be stayed until the determination of the said
appeal.

J. L.,
Clerk.

¹ It will be observed that this order is only necessary when the appeal is
from an order, or when the appeal being from a judgment to the general term,
no security has been given.



PART VIII.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I. SUBMISSION OF CONTROVERSY WITHOUT ACTION.

II. SUMMONS AGAINST JOINT DEBTORS, ETC.

III. CONFESSION OF JUDGMENT.

IV. PAPERS ON ARGUMENT AND APPEAL.

CHAPTER I.

SUBMISSION OF CONTROVERSY WITHOUT ACTION.

(*Under Chap. 1, Title XII.*)

No. 344.

i. *Case agreed upon.*

[TITLE.]

[COUNTY.]

I. On the day of 18.., James Smith died, seised of a farm in the town of, county of
....., bounded

II. Before his death he made and published his will in due form to pass real estate, by which he appointed the plaintiff, John Smith, executor of the same, and devised the said farm in the following words:

“I give and devise my farm in the town of,
to my two grandchildren, George Smith and William Smith, and

SUBMISSION WITHOUT ACTION.

their heirs forever; the said lot of land to be disposed of as follows, by my executor, that is to say, the said farm shall not at any time hereafter be sold or alienated, but my said executor shall, from time to time, lease the same on such terms as he may deem most advantageous to my said grandchildren, and the rents of the same shall be annually paid by my said executor to my said grandchildren, in equal proportions, and if either of my said grandchildren, or their children, desire to occupy any part of my said farm, he or they shall have a preference over any other applicant on paying a reasonable rent therefor. And in case either of my said grandchildren shall die without lawful issue, then and in such case my will is that the share of the one so dying shall inure to the benefit of the survivor and the heirs of such survivor forever."

III. The said will was duly proved, and letters testamentary duly granted thereon to the plaintiff, by the surrogate of the county of, on the day of, 18...

IV. On the day of, 18.., the above named George Smith died without issue.

V. The said farm is in the possession of the defendant, William Smith.

The parties claim as follows:

1. The plaintiff claims that he is entitled to an undivided half of the said lot of land, during the life of the defendant;
2. The defendant claims that the plaintiff has no interest in the same.

We, the above named plaintiff and defendant, agree upon the foregoing case, and submit the same to the court of, to determine the following questions in difference between us:

1. Whether the plaintiff is entitled to any share or interest in the said farm;
2. If entitled to any, to what share or interest he is so entitled.

[Date.]

[Signatures.]

SUBMISSION WITHOUT ACTION.

No. 345.

ii. *Affidavit annexed.*

COUNTY OF : John Smith and William Smith,
the above named plaintiff and defendant, being duly sworn, each
for himself says as follows:

1. The controversy between us, depending upon the facts
above stated, is real;
2. This proceeding is taken in good faith, to determine our
respective rights.

[Signatures.]

Sworn, &c.

No. 346.

iii. *Judgment.*

[TITLE.]

[CAPTION.]

A case agreed between the parties above named, without
action, having been presented to this court, with a submission
thereof and affidavit in due form, and argued at the general term
by, of counsel for the said plaintiff, John
Smith, and by, of counsel for the said de-
fendant, William Smith, it is now adjudged that under the will
of the said James Smith, and since the death of the said George
Smith, the said John Smith is entitled to one undivided half of
the farm mentioned in the case, for the life of the said William
Smith; and that the said John Smith do recover the said undi-
vided half from the said William Smith.

SUMMONS AGAINST JOINT DEBTORS.

CHAPTER II.

SUMMONS AGAINST JOINT DEBTORS AND OTHERS

(Under Chap. 2, of Title XII.)

No. 347.

i. *Summons.*

[TITLE.]

[COUNTY.]

WHEREAS, a judgment was recovered in this action on the day of, 18., for [*describing the judgment,*] in which action you were not originally served with the summons, you are now summoned to show cause, within twenty days after the service hereof, why you should not be bound by the judgment in the same manner as if you had been originally summoned.

Yours, &c.,

A. B., *Judgment Creditor,*
or C. D., *Attorney for Judgment Creditor,*
No. . . street [*Albany.*]

No. 348.

ii. *Affidavit annexed.*

[TITLE.]

COUNTY OF : A. B. [the plaintiff], being duly sworn, says as follows:

1. The judgment recovered in this action has not been satisfied, to my knowledge, information, or belief.
2. The amount due thereon is dollars.

A. B.

Sworn, &c.

 CONFESSION OF JUDGMENT.

CHAPTER III.

CONFESSION OF JUDGMENT.

(Under Chap. 3, Title XII.)

- SECTION 1. Statement of debts actually due.
 2. Statement of debts to become due.
 3. Statement of a liability incurred by the plaintiff.
 4. Affidavit and judgment.

Sec. 1. STATEMENT OF DEBTS ACTUALLY DUE.

No. 349.

i. *For goods sold and delivered.*

[TITLE.]

[COUNTY.]

I, John Jones, authorize

Judgment by confession, without action,

To be entered against me, in favor of John Smith, for
 dollars, for the following cause:

I. On the day of, 18.., at,
 the plaintiff sold and delivered to me [dry goods, *or*, iron, *or*,
 hardware, &c.,] of the value of dollars [at a credit
 of months].¹

JOHN JONES.

[ALBANY, *January 1, 1861.*]

¹ It is not necessary to state that the price was not paid, or that it is justly due, or to become due. *Lanning v. Carpenter*, 20 N. Y., 458.

CONFESSION OF JUDGMENT.

No. 350.

ii. *For money lent.*

[TITLE.]

[COUNTY.]

[*As in No. 349, to the word "cause."*]

I. On the day of, 18.., at, the plaintiff lent me dollars, payable on demand, with interest.

II. On the day of, 18.., at, the plaintiff lent me dollars, on the same terms.

III. On the day of, 18.., I paid to the plaintiff dollars on account.

[Date.]

[Signatures.]

No. 351.

iii. *For the price of real property.*

[TITLE.]

[COUNTY.]

[*As in No. 349, to the word "cause."*]

I. On the day of, 18.., at, the plaintiff sold and conveyed to me [a piece of land in the town of, bounded as follows:];

II. I then promised to pay dollars for the same.

[Date.]

[Signatures.]

 CONFESSION OF JUDGMENT.

No. 352.

iv. *On an account.*[*As in No. 349, to the word "cause."*]

I. I have received from the plaintiff, for my benefit, the following money, goods, and services, of the value and at the times stated as follows:

1860.

June 1. Wheat delivered at my store in	\$402 12
July 6. Barrels delivered at,	124 25
" 18. Flour delivered at,	505 00
Aug. 10. Cash,	50 00
" 20. Transportation of my goods from	
to,	37 63

II. I have paid or delivered to the plaintiff, on account thereof, the following moneys, or goods, of the value and at the times stated as follows:

1860.

Aug. 18. Cash,	\$24 00
Oct. 10 Groceries,	92 00

[*Date.*][*Signatures.*]

 CONFESSION OF JUDGMENT.

No. 353.

v. *On a promissory note.*

[TITLE.]

[COUNTY.]

[As in No. 349, to the word "cause."]

I [State the consideration of the note as fully as if judgment were confessed upon that, instead of the notes.]

II. On the day of, 18..., in consideration thereof, I made to the plaintiff my promissory note for the sum of dollars, payable on the day of, 18... [or, payable days after date].

[Date.]

[Signature.]

No. 354.

vi. *By an indorser, to his indorsee.*

[TITLE.]

[COUNTY.]

[As in No. 349, to the word "cause."]

I. In consideration of [..... dollars guarantee commission paid to me by the plaintiff,] on the..... day of 18.., I indorsed to him, before its maturity, a promissory note, made by one William Brown, on the day of 18.., at, to [my order], for the sum of dollars, payable on the day of, 18.., [or, payable days after date].

II. The same was dishonored.

[Date.]

[Signature.]

 CONFESSION OF JUDGMENT.

No. 355.

vii. *By an indorser, to a remote indorsee.*

[TITLE.]

[COUNTY.]

[As in No. 349, to the word "cause."]

I. I indorsed and negotiated, before its maturity, a bill of exchange, made by one William Brown, on the day of, at, requiring one John Robinson to pay to [my order] dollars, [days after sight thereof].

II. The same was afterwards transferred to the plaintiff.

III. The same has been dishonored.

[Date.]

[Signature.]

No. 356.

viii. *In other cases.*

[TITLE.]

[COUNTY.]

[State the facts as in any of the preceding forms of complaint; speaking in the first person, confessing, instead of charging them, and giving the particulars.]

Sec. 2. STATEMENT OF DEBTS TO BECOME DUE.

No. 357.

i. *For goods sold and delivered, on an unexpired credit.*

[TITLE.]

[COUNTY.]

[No. 349 is sufficient, showing the term of credit. But to this and the subsequent forms in this section MAY be added the following article:]

 CONFESSION OF JUDGMENT.

II. This confession of judgment is made to secure the plaintiff in case of non-payment of the said sum when due.]

[Date.]

[Signature.]

No. 358.

ii. *For money lent.*

[TITLE.]

[COUNTY.]

[As in No. 349, to the word "cause."]

I. On the day of, 18.., at, the plaintiff lent me dollars.

II. I promised to repay the same on the day of, 18...

[Date.]

[Signature.]

No. 359.

iii. *On a promissory note; by the maker.*

[TITLE.]

[COUNTY.]

[As in No. 353.]

No. 360

iv. *By an indorser.*

[TITLE.]

[COUNTY.]

[As in No. 354, or No. 355, omitting the allegation of dishonor.]

 CONFESSION OF JUDGMENT.

Sec. 3. STATEMENT OF A LIABILITY INCURRED BY THE PLAINTIFF.

No. 361.

i. To secure an accommodation indorser.

[*As in No. 349 to the words "favor of," and continue.*] John Smith, for dollars, to secure him against liability for the following cause:

On the day of, 18.., at, the plaintiff indorsed, for my accommodation, a promissory note made by [me], dated the day of, 18.., at, to the order of, for the sum of dollars, payable after date; and delivered the same to me.

[*Date.*]

[*Signature.*]

No. 362.

ii. Affidavit annexed.

COUNTY OF: John Jones, the defendant, being duly sworn, says that the foregoing statement of indebtedness [*or, liability*], is, in all respects, true.

[*Signature.*]

Sworn, &c.

No. 363.

iii. Indorsement of Judgment.

On filing the within statement and affidavit, it is adjudged by the court, that the plaintiff recover of the defendant
 dollars, within confessed, together with
 dollars costs, making together dollars.

CHAPTER IV.

PAPERS ON ARGUMENT AND APPEAL.

No. 364.

1. *Argument papers for the general term, when there has been no appeal.*

1. Where exceptions have been directed to be heard at the general term, pursuant to section 265, the argument papers should contain the pleadings and the exceptions.

2. Where a verdict has been taken, subject to the opinion of the court, pursuant to section 265, the argument papers should contain the pleadings, the verdict, and the point to be submitted to the court, with so much of the evidence as may be necessary to explain it.

No. 365.

ii. *Appeal Book.*

1. In case of appeal from a judgment, the appeal book should contain the notice of appeal and the judgment roll.

2. In case of appeal from an order, the appeal book should contain the notice of appeal, the order appealed from, and the papers on which it was made.

INDEX.

	No.	Page.
ABATEMENT OF NUISANCE:		
complaint for,	150	108
ACCORD AND SATISFACTION:		
defense of,	204	141
ACTIONS:		
for debt,		20
damages,		61
land,		94
chattels,		96
special relief,		98
ADMINISTRATORS:		
complaint by,	7	8
against,	9	9
ADMISSIONS:		
orders upon,		175
AFFIDAVITS:		
on application for order to interplead,	158	114
order of arrest,	237	159
warrant of attachment,	251	169
on requisition for chattels,	242	164
in proceedings supplementary to execution,	327	228
in proceedings supplementary to execution,	331	231
on submission of controversy,	345	243
on issuing summons against joint debtors, &c.,	348	244
on confession of judgment,	362	251
AGREEMENT:		
See <i>Apprentice, Land, Indemnity.</i>		
ANSWER:		
general form of answer,	169	127

ANSWER—(Continued).

	No.	Page.
<i>general denial :</i>		
positive,	170	128
of knowledge or information,	171	128
<i>specific denial :</i>		
by articles,	172	129
of loan,	173	129
of receipt of money,	174	129
of demand,	175	130
of request,	176	130
of note,	177	130
of indorsement,	178	130
of notice of dishonor,	179	131
of acceptance of bill,	180	131
of presentment,	181	131
<i>avoidance, not to the merits :</i>		
want of jurisdiction,	182	132
infancy of plaintiff,	183	132
marriage of plaintiff,	184	133
marriage of defendant after contract,	185	133
non-joinder of necessary plaintiff,	186	134
non-joinder of necessary defendant,	187	134
no such corporation,	188	134
pendency of another action,	189	135
<i>to the merits, showing the contract to be void :</i>		
infancy of defendant,	190	135
marriage of defendant,	191	135
want of consideration,	192	136
mistake,	193	136
fraud,	194	136
duress,	195	137
statute of frauds,	196	137
usury,	197	138
goods not necessary,	198	138
award invalid,	199	139
judgment void,	200	139
<i>to the merits, showing that no cause of action has accrued :</i>		
credit unexpired,	201	140
<i>to the merits, in discharge of the contract :</i>		
payment,	202	140
tender,	203	140
accord and satisfaction,	204	141
release,	205	141
insolvent discharge,	206	142
novation,	207	142
arbitration and award,	208	143

ANSWER—(*Continued*).

	No.	Page.
former judgment,	209	143
statute of limitations,	210	143
alteration of contract (by surety),	211	144
reducing value and pleading payment,	212	144
reducing amount promised and pleading payment,	213	144
explaining contract, and showing breach as to delivery,	214	145
the same as to quality,	215	145
breach of warranty of chattels,	216	146
breach of warranty of land,	217	146
surrender,	218	146
eviction,	219	147
<i>justification in actions on wrongs :</i>		
truth of publication,	220	147
privileged publication,	221	114
privileged communication,	222	148
privileged communication,	223	149
self-defense,	224	149
leave and license,	225	150
property distrained doing damage,	226	150
lien upon goods detained,	227	150
<i>several defenses :</i>		
legal and equitable defenses to action for land,	228	151
defense and mitigation of libel,	229	152
<i>counterclaim :</i>	230	153
and defense,	231	153
and several defenses,	232	154
APPEALS :		
<i>notice of appeal :</i>		
to the court of appeals,	334	233
to the general term, from a judgment,	335	234
to the general term, from an order,	336	234
from a justice,	337	234
<i>undertaking on appeal :</i>		
to the court of appeals, for costs,	338	235
to stay proceedings on judgment for money,	339	236
to stay proceedings on judgment for chattels,	340	236
to stay proceedings on judgment for land,	341	237
to a county court,	342	238
<i>order staying proceedings :</i>		
pending appeal,	343	239
<i>judgments on appeal :</i>	316	219
<i>appeal book :</i>	365	252
APPRENTICE'S AGREEMENT :		
complaint on, by the master,	96	66
by the apprentice,	97	67

	No.	Page.
ARBITRATION AND AWARD :		
defense of,	208	143
ARGUMENT :		
papers on,	364	252
ARREST :		
affidavit on application for,	237	159
undertaking on,	238	160
order of,	239	161
undertaking of bail, common form,	240	162
in action for chattels,	241	162
ASSAULT AND BATTERY :		
complaints for,	121	85
complaints for,	122	86
defense to action for,	224	149
ASSESSMENT :		
complaint for vacating an,	147	105
ASSIGNEE :		
complaint by,	24	18
for benefit of creditors, complaint by,	25	19
ASSOCIATION :		
complaint by an,	18	14
ATTACHMENT :		
affidavit on application for,	251	169
undertaking on application for,	252	169
warrant of,	253	170
undertaking on discharge of,	254	170
AVOIDANCE :		
answers in,		132
AWARD :		
complaint on an,	52	36
defense to action on,	199	139
defense of,	208	143
BAILER :		
complaint against a,	109	76
BAIL :		
undertaking of, in ordinary cases,	240	162
in action for chattels,	241	162
complaint on undertaking of,	99	69
BILLS OF EXCHANGE :		
inland: drawer against acceptor,	64	43
payee against acceptor,	65	43

INDEX.

257

	No.	Page.
BILLS OF EXCHANGE—(Continued).		
first indorsee against acceptor,.....	66	44
subsequent indorsee against acceptor,	67	44
payee against drawer,	68	45
first indorsee against first indorser,	69	45
subsequent indorsee against first indorser,	70	46
subsequent indorsee against last indorser,	71	46
subsequent indorsee against intermediate indorser,	72	47
subsequent indorsee against drawer, acceptor and indorser,...	73	47
foreign: payee against drawer,	74	48
payee against acceptor,	75	48
BOND:		
complaint on bond for payment of money only,	55	38
for faithfulness of a clerk,	98	68
BOARD AND LODGING:		
complaint for,	49	35
BUILDER'S CONTRACT:		
complaint on breach of,	95	66
CARRIERS:		
complaints by,	50, 51	35
CASE:		
without exceptions,	265	179
with exceptions,	266	180
CAUSES OF ACTION:		
complaint for several,	88	59
CHARTER PARTY:		
complaint on,.....	105	73
CHATELS:		
complaint for possession of chattels wrongfully taken,.....	137	96
wrongfully detained,.....	138	96
against taker and transferer,	139	97
for breach of warranty of,	102	71
for trespass upon,	107	75
for conversion of,	108	75
for breach of contract to sell,.....	91	63
for restoration of, and injunction,.....	152	109
CLAIMS TO LAND:		
complaint for determination of,.....	146	104
COLLATERAL SECURITIES:		
complaint to reach,	165	123
COMMITTEE OF A LUNATIC:		
complaint by,	10	10
against,.....	11	11

	No.	Page.
COMPANY :		
complaint by joint-stock,	17	14
COMPLAINTS :		
general form of,	5	6
<i>by or against particular persons :</i>		
by an executor,	6	7
administrator,	7	8
against an executor,	8	9
administrator,	9	9
by committee of lunatic, &c.,	10	10
against same,	11	11
by a public officer,	12	11
receiver pending suit,	13	12
in supplementary proceedings,	14	12
of a bank,	15	13
against a receiver,	16	13
by a joint-stock company,	17	14
an association,	18	14
a foreign corporation,	19	15
an infant,	20	15
against a married woman,	21	16
husband and wife for ante-nuptial debt,	22	17
same,	23	18
by assignee of a claim,	24	18
for benefit of creditors,	25	19
<i>for debt :</i>		
for money lent,	26	20
money received, generally,	27	21
for goods sold by factor,	28	22
through mistake,	29	23
money paid to a third party,	30	23
by surety,	31	24
goods sold and delivered at a fixed price,	32	25
reasonable price,	33	26
to a third party,	34	26
to defendant's family,	35	27
goods sold but not delivered, at a fixed price,	36	27
reasonable price,	37	28
not accepted,	38	28
deficiency on resale,	39	29
price of real property conveyed,	40	30
sold but not conveyed,	41	30
services, at a fixed price,	42	31
reasonable price,	43	32
and materials, at a fixed price,	44	32

COMPLAINTS—(<i>Continued</i>).	No.	Page.
for services and materials at a reasonable price,	45	33
rent reserved in a lease,	46	33
use and occupation, at a fixed rent,	47	34
reasonable rent,	48	34
board and lodging,	49	35
freight,	50	35
passage money,	51	36
on an award,	52	36
a foreign judgment,	53	37
an instrument for the payment of money only,	54	38
a bond for the payment of money only,	55	38
promissory notes:		
payee against maker,	56	39
first indorsee against maker,	57	39
subsequent indorsee against maker,	58	40
first indorsee against indorser,	59	40
subsequent indorsee against first indorser,	60	41
last indorser,	61	41
intermediate indorser,	62	42
all prior parties,	63	42
inland bills of exchange:		
drawer against acceptor,	64	43
payee against acceptor,	65	43
first indorsee against acceptor,	66	44
subsequent indorsee against acceptor,	67	44
payee against drawer,	68	45
first indorsee against indorser,	69	45
subsequent indorsee against first indorser,	70	46
last indorser,	71	46
intermediate indorser,	72	47
all prior parties,	73	47
foreign bills of exchange:		
payee against drawer,	74	48
acceptor,	75	48
insurance policies:		
on vessel,	76	49
cargo,	77	50
freight,	78	51
general average,	79	51
particular average,	80	52
fire policy,	81	53
correcting alleged mistake,	82	54
life policy,	83	55
guaranty,	84	56
debts created by statute:		
for an escape,	85	57

COMPLAINTS—(<i>Continued</i>).		No.	Page.
penalty under license law,.....	86	58	
metropolitan police law,.....	87	59	
several causes of action,.....	88	59	
<i>for damages on breach of contract :</i>			
on breach of agreement to convey land,.....	89	61	
purchase land,.....	90	62	
for not delivering goods sold,	91	63	
for discharging from employment,.....	92	64	
not employing,.....	93	65	
not serving,	94	65	
defective workmanship,.....	95	66	
on apprenticeship agreements ; master against father,.....	96	66	
apprentice against master,....	97	67	
on bond for fidelity of a clerk,.....	98	68	
undertaking of bail,.....	99	69	
covenants of title ; grantee against grantor,.....	100	70	
tenant against landlord,	101	70	
warranty of chattels,.....	102	71	
real estate,	103	72	
agreement of indemnity,.....	104	72	
charter party,	105	73	
<i>for damages upon wrongs :</i>			
for trespass on land,	106	74	
chattels,	107	75	
conversion of personal property,	108	75	
against warehouseman,	109	76	
sheriff, for not executing process,.....	110	76	
false return,	111	77	
for procuring property by fraud,	112	78	
inducing plaintiff to speculate, by fraud,.....	113	79	
procuring credit for a third party, by fraud,	114	80	
insurance by fraud,.....	115	80	
erecting a nuisance,	116	82	
continuing a nuisance,	117	83	
obstructing a way,	118	83	
diverting a watercourse,	119	84	
waste,	120	85	
assault and battery,.....	121	85	
with special damage,	122	86	
false imprisonment,.....	123	86	
injuries caused by negligence,.....	124	87	
the same, against a railroad,	125	88	
the same, by an executor, &c.,.....	126	89	
libel ; libelous on its face,	127	90	
not libelous on its face,	128	90	
slander ; actionable words,	129	91	

	No.	Page.
COMPLAINTS—(Continued).		
slander; words specially actionable,	130	91
malicious prosecution,	131	92
slander of title,	132	93
<i>for specific property :</i>		
for land; by owner,	133	94
title and possession of land,	134	94
land; by tenant,	135	95
general form,	136	95
chattels wrongfully taken,	137	96
detained,	138	96
against fraudulent purchaser and transferee,	139	97
<i>for special relief :</i>		
for specific performance,	140	98
rescission of contract,	141	99
foreclosure of mortgage,	142	100
redemption,	143	101
partition, common form,	144	102
on account of waste,	145	103
determination of claims to land,	146	104
vacating assessment,	147	105
forfeiture and eviction, on account of waste,	148	107
injunction against waste,	149	108
abatement of a nuisance,	150	108
injunction against diversion of water,	151	109
for restoration of chattels, and injunction,	152	109
creditor's action on judgment of a court,	153	110
of a justice,	154	112
against trustees,	155	112
for interpleader,	156	113
dissolution of partnership,	160	117
divorce from bonds of matrimony,	160	117
bed and board,	162	119
for an elective office,	163	120
a non-elective office,	164	121
<i>for ordinary and special relief united :</i>		
for ordinary judgment on a note, and to reach collateral securities,	165	123
damages on, and injunction against a nuisance,	166	124
CONFESSION OF JUDGMENT for debts due :		
on goods sold,	349	245
money lent,	350	246
price of land,	351	246
on account,	352	247
a promissory note,	353	248
an indorsement,	354	248

	No.	Page.
CONFESSION OF JUDGMENT for debts due—(Continued).		
an indorsement,	355	249
in other cases,	356	249
for debts to become due:		
on goods sold,	357	249
in other cases,		250
for a liability incurred by plaintiff,	361	251
affidavit annexed to,	362	251
indorsement on,	363	251
CONSIDERATION, WANT OF:		
defense of,	192	136
CONVERSION OF CHATTELS:		
complaint for,	108	75
CORPORATION:		
complaint by foreign,	19	15
against trustees of dissolved,	155	112
defense of "no such corporation,"	188	134
COUNTERCLAIM:		
alone,	230	153
and defense,	231	153
and several defenses,	232	154
COVENANT FOR TITLE:		
complaint for breach of grantee against grantor,	100	70
tenant against landlord,	101	70
CREDIT UNEXPIRED:		
defense of,	201	140
CREDITOR'S ACTION:		
on judgment of a court of record,	153	110
justice,	154	112
DAMAGE DOING:		
defense of,	226	150
DAMAGES ON BREACH OF CONTRACT:		
complaints for,		61
DAMAGES ON WRONGS:		
complaints for,	106	74
DEBT:		
complaints for,		20
DECEIT:		
complaint for procuring property by fraud,	112	78
for inducing plaintiff to enter into a speculation by fraud,	113	79
for procuring credit for a third person by fraud,	114	80
against directors of a corporation for fraudulent statements, ..	115	80
for the recovery of goods obtained by fraud,	139	96
see <i>Sheriff</i> .		

INDEX.

263

	No.	Page.
DECISION :		
of a judge,	268	181
with findings of a jury on special issue,	269	182
DEFAMATION :		
complaints for,		90
DEFENSES, SEVERAL :		
answers containing,		151
DEMURRER :		
to the whole complaint,	167	125
part of the complaint,	168	126
to the answer,	233	155
to the reply,	236	157
DENIAL :		
answers of,		128
DISCHARGE IN INSOLVENCY :		
defense of,	206	142
DISSOLUTION OF PARTNERSHIP :		
complaint for,	160	117
DISTRESS :		
defense of goods taken on,	226	150
DIVORCE FROM THE BONDS OF MATRIMONY :		
complaint for,	161	117
bed and board, complaint for,	162	119
DURESS :		
defense of,	195	137
EMPLOYMENT :		
complaints for breach of contract of,	92	64
complaints for breach of contract of,	93	65
ESCAPE :		
complaint against a sheriff for,	85	57
EVICTON :		
defense of,	219	147
EXCEPTIONS :		
on trial by jury,	267	180
by the court,	271	187
by referee,		191
notice of,	270	187
EXECUTOR :		
complaint by an,	6	7
against,	8	9
by executor against railroad,	126	89
execution against,	320	223

	No.	Page.
EXECUTION FOR MONEY :		
against the property of all the judgment debtors,.....	318	221
joint property of all, and individual property of some		
of the debtors,.....	319	222
property in the hands of a trustee,	320	223
indorsements on,.....		223
against the person,.....	324	224
for chattels,.....	325	225
for land,.....	326	226
proceedings supplementary to. See <i>Supplementary Proceedings</i> .		
FACTOR :		
complaint against,.....	28	22
FALSE RETURN :		
complaint against a sheriff for,.....	111	77
FALSE IMPRISONMENT :		
complaint for,.....	123	86
FORECLOSURE OF MORTGAGE :		
complaint for,	142	100
FORFEITURE OF ESTATE FOR WASTE :		
complaint for,.....	148	107
FRAUD :		
defense of,.....	194	136
FREIGHT :		
complaint for,.....	50	35
GOODS SOLD AND DELIVERED :		
complaint for, at a fixed price,.....	32	25
at a reasonable price,	33	26
to a third party at defendant's request,	34	26
to defendant's family,	35	27
GOODS SOLD BUT NOT DELIVERED :		
complaint for, at a fixed price,.....	36	27
reasonable price,.....	37	28
GOODS SOLD BUT NOT ACCEPTED :		
complaint for the price of,.....	38	28
deficiency on resale of,	39	29
GOODS SOLD :		
complaint for not delivering,.....	91	63
GOODS, NOTES AND SERVICES :		
complaint for,.....	88	59
GUARANTY :		
complaint on,.....	84	56

INDEX.

265

	No.	Page.
HUSBAND AND WIFE :		
complaints against,	22	17
complaints against,	23	18
IMPRISONMENT :		
complaint for false,	123	86
INDEMNITY :		
complaint on agreement of,	104	72
See <i>Bond, Guaranty.</i>		
INFANT :		
complaint by,	20	15
INFANCY :		
of plaintiff, defense of,	183	132
of defendant, defense of,	190	135
INJUNCTION :		
by a judge,	248	167
with order to show cause,	249	168
by the court,	250	168
undertaking on application for,	247	167
against waste ; complaint for,	149	108
against diversion of water ; complaint for,	151	109
against a nuisance ; complaint for,	166	124
against injury to chattels ; complaint for,	152	109
INJURIES TO THE PERSON :		
complaints on willful,		85
negligent,		87
INSOLVENCY :		
Defense of,	206	142
INSTRUMENT :		
for payment of money only ; complaint on,	54	38
INSURANCE (MARINE) POLICY :		
complaint on ; vessel lost,	76	49
cargo lost,	77	50
freight lost,	78	51
general average,	79	51
particular average,	80	52
INSURANCE (FIRE) POLICY :		
complaint on,	81	53
correcting alleged mistake in the policy,	82	54
INSURANCE (LIFE) POLICY :		
complaint on,	83	55

	No.	Page.
INTERPLEADER :		
complaint for,.....	156	113
notice of motion for,	157	114
affidavit on motion for,	158	114
order of,.....	159	115
JOINT STOCK COMPANY :		
complaint by,	17	13
JUDGMENT :		
complaint on a foreign,	53	37
defense to action on,	200	139
defense of former,	209	143
JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR MONEY :		
on failure to answer, in actions upon contract, after personal service,	279	194
in actions upon contract, after service by publication,	280	195
in other actions, after personal service,....	281	195
in other actions, after service by publication,	282	196
on partial failure to answer,	283	197
on trial, upon demurrer,	284	198
a verdict,	285	198
by the court,	286	199
by referee,	287	199
JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR CHATTELS :		
on failure to answer, after personal service,	288	200
after service by publication,	289	201
on trial, upon demurrer,	290	201
a verdict,	291	202
by the court,	292	203
by referee,	293	203
JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR LAND :		
on failure to answer, after personal service,	294	204
after service by publication,	295	204
when damages are recovered,	296	205
on trial, upon demurrer,	297	206
a verdict,	298	206
by the court,	299	207
by a referee,	300	207
JUDGMENTS FOR THE PLAINTIFF IN ACTIONS FOR SPECIAL RELIEF :		
on failure to answer, after personal service,	301	208
after service by publication,	302	209
on trial, upon demurrer,	303	210
a verdict,	304	210
by the court,	305	211
by the court, another form,	306	211
by referee,	307	213

INDEX.

267

	No.	Page.
JUDGMENTS FOR THE DEFENDANT :		
without trial, dismissing complaint,	308	214
upon trial, dismissing complaint on demurrer,	309	215
after verdict,	310	215
on trial by the court,	311	216
by referee,	312	216
JUDGMENT FOR SOME OF THE PARTIES ON EACH SIDE :		
some of the plaintiffs against all the defendants,	313	217
all the plaintiffs against some of the defendants, ...	314	217
some of the plaintiffs against some of the defendants,	315	218
JUDGMENT ON APPEAL :		
affirmance at the general term,	316	219
under remittitur from court of appeals,	317	219
on submission of controversy without action,	346	243
by confession. See <i>Confession of Judgment</i> .		
JURISDICTION :		
defense of want of,	182	132
LAND :		
complaint for the price of land conveyed,	40	30
sold but not conveyed,	41	30
on breach of agreement to convey,	89	61
to purchase,	90	62
for the possession, by the owner,	133	94
by a tenant,	135	95
general form,	136	95
for title and possession, by the owner,	134	94
special relief in relation to,		98
foreclosure of mortgage on,	142	100
redemption of, .	143	101
partition of,	144	102
partition of,	145	103
determination of claims to,	146	104
vacating an assessment on,	147	105
LEAVE AND LICENSE :		
defense of,	225	150
LIBEL :		
complaint for words libelous in themselves,	127	90
words not libelous in themselves,	128	90
defenses to action for,		147
defense and mitigation of,	229	152
LIEN :		
defense of,	225	150
LIMITATIONS :		
defense under statute of,	210	143

	No.	Page.
LUNATIC :		
complaint by	10	10
against	11	11
MALICIOUS PROSECUTION :		
complaint for	131	92
MARRIAGE :		
of plaintiff; defense of	184	133
of defendant; defense of	185	133
of defendant; defense of	191	135
MARRIED WOMAN :		
complaint against	21	16
<i>See Husband and Wife.</i>		
MASTER AND SERVANT : See Apprenticeship, Services.		
MISTAKE :		
complaint for money received through	29	23
defense of	193	136
MONEY LENT :		
complaint for	26	20
MONEY PAID :		
complaint for, to a third party at defendant's request,	30	23
by a surety,	31	24
MONEY RECEIVED :		
complaint for, common form,	27	21
price of goods sold by a factor,	28	22
through mistake,	29	23
MORTGAGE :		
complaint for foreclosure of	142	100
for redemption from	143	101
NECESSARIES FURNISHED DEFENDANT'S FAMILY :		
complaint for	35	27
defense to action for	198	138
NEGLIGENCE :		
complaints on injuries caused by		87
NON-JOINDER OF A NECESSARY PARTY :		
defense of	186	134
defense of	187	134
NOTES : See Promissory Notes.		
NOTICE :		
of motion for order to interplead,	157	114
of exceptions,	270	187
NOVATION :		
defense of	207	142

	No.	Page.
NUISANCE :		
complaint for damages caused by erection of	116	82
continuanee of	117	83
for abatement of	150	108
for damages and injunction against	166	124
See <i>Watercourse, Way.</i>		
OFFICE :		
complaint for an elective	163	120
a non-elective	164	121
OFFICER :		
complaint by public,	12	11
ORDER :		
of interpleader,	159	115
of arrest,	239	161
for reference to appoint a receiver,	255	172
to report a receiver,	256	173
confirming referee's report,	257	173
to deliver property,	258	175
to satisfy part of plaintiff's claim,	259	175
of reference,		188
staying proceedings on appeal,	343	239
to judgment debtor to attend examination, ...	328	229
to surrender property,	329	229
to third person to attend examination,	332	312
to pay debt, &c.,	333	232
appointing a receiver in supplementary proceedings,	330	230
PARTITION OF REAL PROPERTY :		
complaint for	144	102
on account of waste,	145	103
PARTNERSHIP :		
complaint for dissolution of.	160	117
PASSAGE MONEY :		
complaint for	51	36
PAYMENT :		
defense of	202	140
answer disputing amount and pleading	212	144
answer disputing amount and pleading	213	144
PENALTIES :		
under license law, complaint for	86	58
under metropolitan police law, complaint for	87	59
PENDENCY OF ANOTHER ACTION :		
defense of	189	135

	No.	Page.
PLEADINGS:		
complaints,	5	
demurrers to complaints,	125	
answers,	127	
demurrer to answer,	155	
replies,	156	
demurrer to reply,	157	
POLICY. See Insurance.		
PRIVILEGED PUBLICATION:		
defense of	221	148
communication, defense of	222	148
communication, defense of	223	148
PROCEEDINGS SUPPLEMENTARY TO EXECUTION. See Supplementary Proceedings.		
PROMISSORY NOTES: COMPLAINTS ON.		
payee against maker,	56	39
first indorsee against maker,	57	39
first indorser,	59	40
subsequent indorsee against maker,	58	40
first indorser,	60	41
last indorser,	61	41
intermediate indorser,	62	42
maker, first and second indorsers,	63	42
RAILROAD COMPANY:		
complaints against, for negligence,		88
REAL PROPERTY. See Land.		
complaints for special relief in relation to		98
foreclosure of mortgage on,	142	100
redemption of,	143	101
partition of,	144	102
partitfon of,	145	103
determination of claims to	146	104
RECEIVER:		
pending suit: appointment of,		172
complaint by	13	12
in supplementary proceedings: appointment of,	330	230
complaint by	14	12
of a bank: complaint by	15	13
complaint against,	16	13
REDEMPTION OF REAL PROPERTY:		
complaint for	143	101
REFERENCE:		
order of, by consent,	272	188

INDEX.

271

	No.	Page.
REFERENCE—(Continued).		
order of, compulsorily, in cases of account,	273	188
for taking account before judgment,	274	189
for taking account after judgment,	275	189
on a question of fact aside from the pleadings,	276	190
report of referee on all the issues,	277	190
on part of the issues, or on an account,	278	191
RENT.		
complaint for rent reserved in a lease,	46	33
use and occupation at a fixed rent,	47	34
at a reasonable rent,	48	34
board and lodging,	49	35
REPLY :		
to counterclaim,	234	156
to defense in avoidance,	235	156
REQUISITION OF PERSONAL PROPERTY :		
affidavit on,	242	164
requisition on the sheriff,	243	165
undertaking by plaintiff,	244	165
by defendant,	245	165
against claim of third person,	246	166
RESCISSIION OF CONTRACT :		
complaint for,	141	99
SALE :		
complaints on breach of agreements of		63
SELF-DEFENSE :		
defense of,	224	149
SERVICES.		
complaint for services at a fixed price,	42	31
at a reasonable price,	43	32
and materials, at a fixed price,	44	32
at a reasonable price,	45	33
for breach of contract to employ,	92	64
for breach of contract to employ,	93	65
to serve,	94	65
against a builder for bad workmanship,	95	66
See <i>Apprentice's agreement.</i>		
SHERIFF :		
complaint against, for escape,	85	57
for false return,	111	77
for not executing process,	110	76
SLANDER :		
complaint for, words actionable in themselves,	129	91
words not actionable in themselves,	130	91
SLANDER OF TITLE :		
complaint for,	132	93
SPECIAL RELIEF :		
complaints for,		98

	No.	Page
SPECIFIC PERFORMANCE :		
complaint for,.....	140	98
STATUTE :		
complaints upon debts created by,.....		57
STATUTE OF FRAUDS :		
defense of,.....	196	137
STATUTE OF LIMITATIONS :		
defense of,....	210	143
SUMMONS :		
in actions on contract for money only, complaint served,	1	1
in other actions, complaint served,	2	2
in actions on contract for money only, complaint not served,.....	3	2
in other actions, complaint not served,.....	4	3
against joint debtors and others,.....	347	244
SUPPLEMENTARY PROCEEDINGS AFTER EXECUTION :		
against the judgment debtor; affidavit,.....	327	228
order to attend,.....	328	229
order to surrender property,	329	229
order for receiver,	330	230
against third persons; affidavit,.....	331	231
order to attend,.....	332	231
order to pay debt, &c.,.....	333	232
SURETY :		
complaint for money paid by.	31	24
against.....	84	56
defense to action against	211	144
SURRENDER :		
defense of,.....	218	146
TENDER :		
defense of,.....	203	140
TITLE :		
complaints on covenants of,		70
TRESPASS :		
upon land ; complaint for,....	106	74
upon chattels,.....	107	75
TRIAL AND ITS INCIDENTS,.....		177
TRIAL BY JURY,.....		177
TRIAL BY THE COURT,		181
TRIAL BY REFEREE,.....		188
TRUSTEES OF A DISSOLVED CORPORATION :		
complaint against,	155	112

INDEX.

273

	No.	Page.
TRUTH OF PUBLICATION :		
defense of,	220	147
UNDERTAKING :		
on order of arrest,	238	160
of bail, common form,	240	162
in action for chattels,	241	162
on requisition for chattels, by plaintiff,	244	165
by defendant,	245	165
against claim,	246	166
on injunction,	247	167
on attachment,	252	169
on appeal to the court of appeals, for costs,	338	235
to stay proceedings,	339	236
to a county court,	342	238
of bail, complaint on,	99	69
USE AND OCCUPATION :		
complaint for, at a fixed rent,	47	34
at a reasonable rent,	48	34
USURY :		
defense of,	197	138
VERDICT :		
in an action for money only,	260	177
for chattels,	261	178
for land,	262	178
subject to the opinion of the court,	263	179
special,	264	179
WAREHOUSEMAN :		
complaint against, for refusal to deliver goods,	109	76
WARRANTY :		
Complaint for breach in relation to chattels,	102	71
land,	103	72
defense of breach of	216	146
defense of breach of,	217	146
WASTE :		
complaint for treble damages on.	120	85
for partition or damages on.	145	103
for forfeiture and eviction for.	148	107
for injunction against.	149	108
WATERCOURSE :		
complaint for damages, on diversion of.	119	84
for injunction against diversion of.	151	109
WAY :		
complaint for damages, on obstruction of	118	83

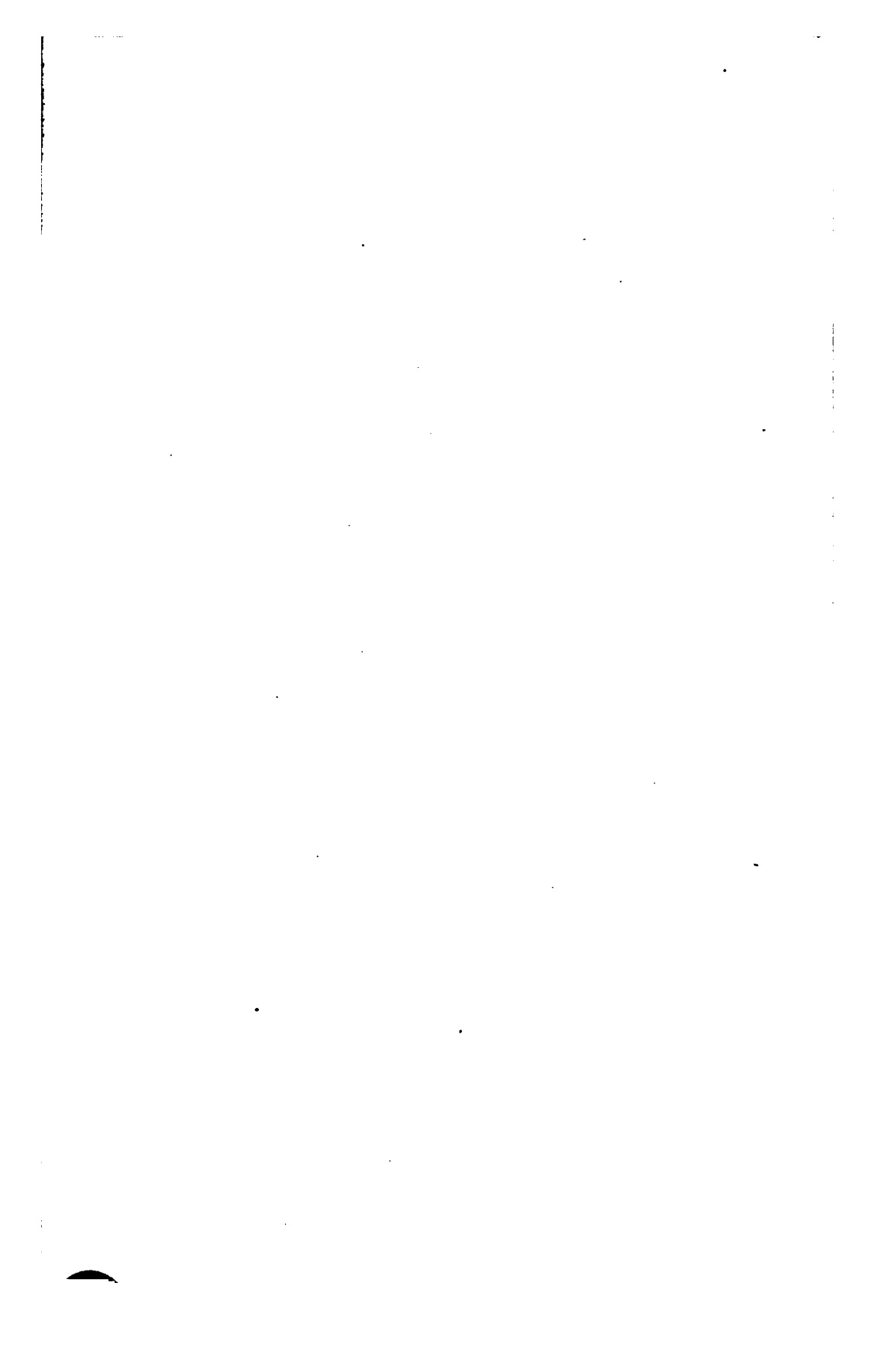
1

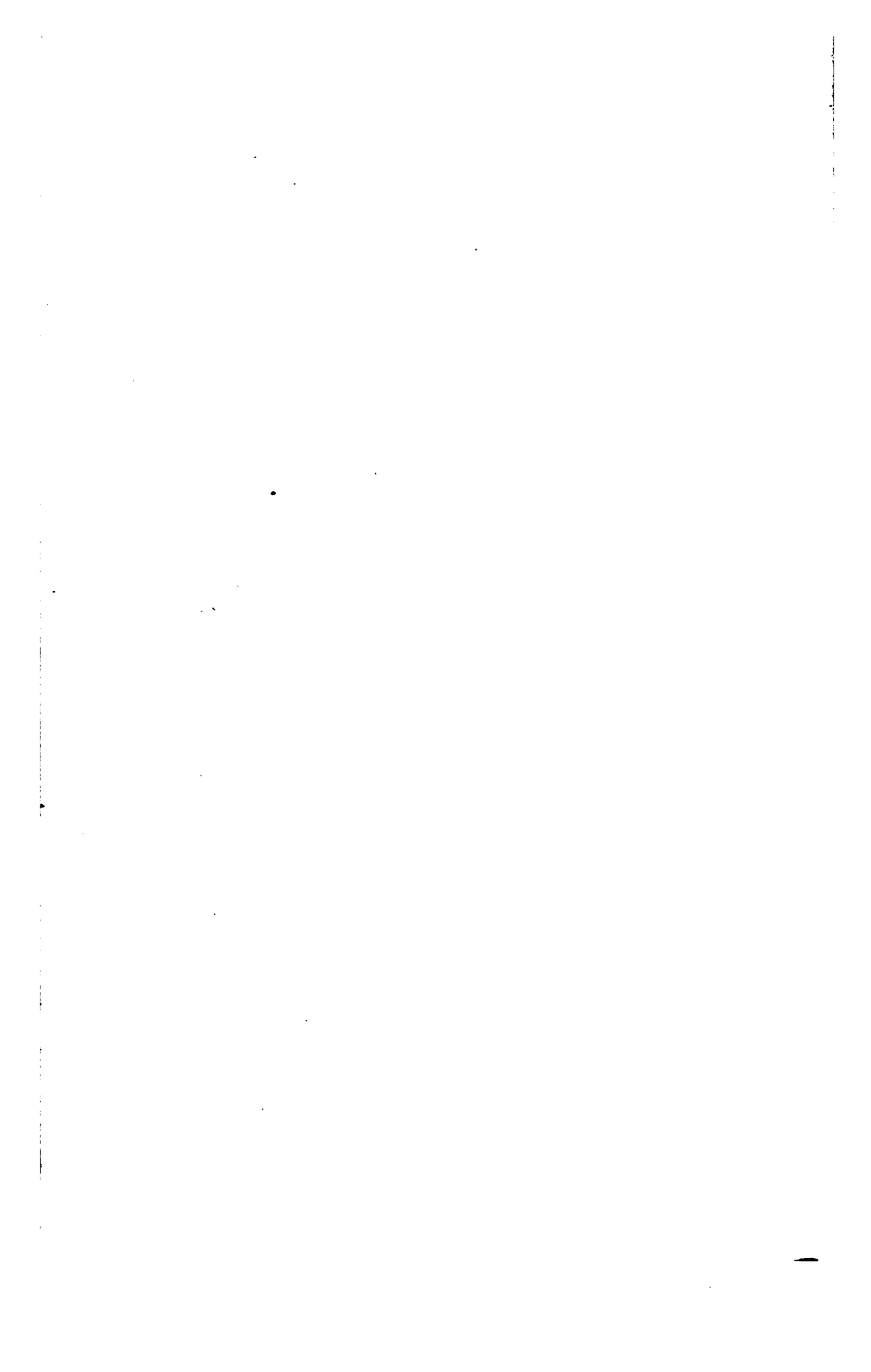
1

1

1

1







TCR DA 1861
Book of forms, adapted to the
Stanford Law Library



3 6105 044 823 347